Public Utilities

FORTNIGHTLY

September 14, 1944

RECOGNITION FOR UTILITY WAR EFFORT
By Larston D. Farrar

« »

Woman Power Keeps 'em Rolling
By David Markstein

« »

Fitting Future Veterans into Postwar Jobs
By Lieutenant Guy E. Trulock

« »

Tu Quoque, Say the Tramways
By A. E. Perks

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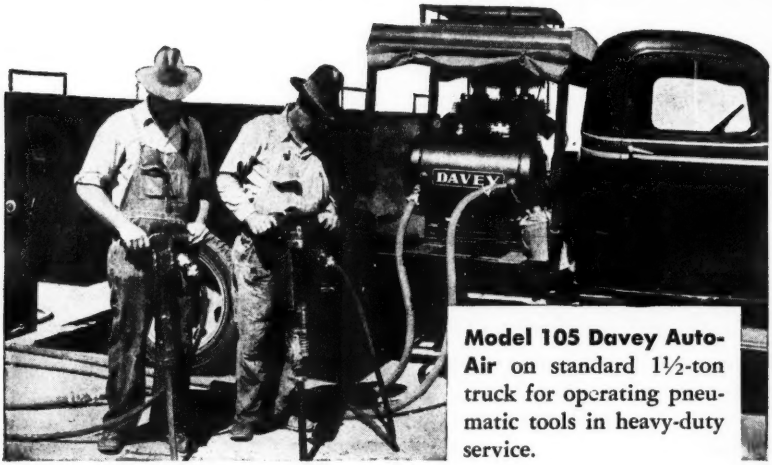

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Public Utilities Fortnightly

VOLUME XXXIV *September 14, 1944* NUMBER 6

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

Publication Office ..... CANDLER BUILDING, BALTIMORE 2, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON 4, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1944 by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

THE opening article in this issue by LARSTON D. FARRAR, Washington free-lance writer, formerly of the editorial staff of *Nation's Business,* was written prior to the recent sensational developments in the European war theater. Hence the superficial answer to the question he poses, "Will the utilities get a medal?" might be to the effect that if they don't hurry up and get one a good part of the war will be over.

BUT war medals—speaking now, generally, and not of any special recognition for utility war effort—have a way of gaining luster with the passing years. A Union army decoration for gallantry in the bitter action at Antietam Creek is gazed on today with awed reverence by grandchildren and great-grandchildren, whereas in 1870 it might not have brought any more than $3 in a Philadelphia pawnshop.

THIS, of course, is not intended in any way to reflect on the valor so properly recognized by these decorations. It is merely to venture a comment on the relativity of public sentiment with respect to official decorations, and so forth.

RIGHT now, the Army and Navy "E" has properly been awarded to so many large and competent industries with their hundreds of thousands of employees, that about every other working man or woman one passes on the downtown streets of the city of Baltimore, for example, is likely to display one. The reason, of course, is not that the merit behind the Army or Navy award has been diluted or inflated. On the other hand, American industry generally has performed so capably and well that there is need to spread the credit far and wide. It was possibly with this thought in mind that the Coffin award for meritorious service in the electric industry was given to the industry as a whole at the last meeting of the Edison Electric Institute.

DAVID MARKSTEIN

The hand that rocks the controller is keeping the streetcars moving for war workers.

(SEE PAGE 341)

GUY E. TRULOCK

The returning serviceman is going to need some reindoctrination for business purposes.

(SEE PAGE 347)

LIKE the ancient Union army decoration mentioned above, these little "E" buttons, Signal Corps certificates, and other badges of recognition for service on the home front will seem to gain importance in years ahead. When the combat troops come marching home in triumph with their distinguished service awards, Purple Hearts, and so forth, then the working wife who was left at home, the father, and the older brother will be glad to be able to show the returning veteran some evidence that folks at home did their part well. Even though it be only an emblem for the purchase of war bonds or donating blood to the Red Cross—both tremendously important home-

front functions, of course—it will be proudly displayed.

ANYWAY, we decided there was still considerable point in MR. FARRAR'S suggestion that the utility companies and their employees should be given some tangible recognition. Even this late in the day, when so much of France has been liberated and the Allied armies are knocking at the doors of Germany itself, it is not too late to give credit where it is due.

WISTFULLY, we have noticed how more affectionate the ties of American Legion associations for World War I veterans have become—now that the ranks are thinning and graying and, in all too many instances, growing quite paunchy. In just a few years, there will be another American Legion, or some similar organization, for World War II veterans to begin its traditional revival of experiences of comradeship under the strain of war.

THE other evening we happened to notice the old civilian defense gang in our neighborhood gathered at the meeting place, although the danger of foreign bombardment has for many months passed away in the light of Allied victories. Cobwebs have formed over the little stacks of gas masks. The sand buckets and other paraphernalia would probably not pass the same smart inspection that they were once exposed to in the darker hours of 1942.

BUT something, perhaps nothing more than sentiment, made a few of the old bunch come back and put their helmets and arm bands on. They sat around, talked war and politics, and played pinochle, instead of listening to some spirited message on civilian defense, as in bygone times. Gregarious mankind relishes these associations, no matter by what chance they were inspired. It wouldn't surprise us if somebody didn't start a postwar organization to continue the civilian defense meetings. Certainly they brought forth evidence of neighborliness which many of us did not dream existed before the war. It's not even too fantastic to imagine American cities in 1950 bidding for the national convention of the Civil Defense Legion, replete with horseplay and shenanigans, with wall ladders and stirrup pumps. Peace, it's wonderful!

LARSTON D. FARRAR

Should the utility war effort alone be taken for granted?

(SEE PAGE 333)

ANOTHER article dealing with the war experience of utility companies in this issue is "Woman Power Keeps 'em Rolling" by DAVID MARKSTEIN, starting page 341. MR. MARKSTEIN is a New Orleans free-lance writer now serving with the U. S. Navy.

MORE on the postwar side is LIEUTENANT GUY E. TRULOCK'S article on rehabilitating the returning veterans for employment after the war. LIEUTENANT TRULOCK is a native of Missouri and a graduate of Park College of that state and Northwestern University of Chicago.

HE began his business career with the educational bureau of the Commonwealth Edison Company in 1928 and in December, 1941, he was loaned by that organization's public relations department to the Office of Civilian Defense. He was commissioned a Lieutenant in the Navy in December, 1942, and is now on duty in Richmond, Virginia.

A. E. PERKS, whose article on the tramway situation in Canada begins on page 355, was born in Kidderminster, England, in 1887, traveling and studying in Scotland, Belgium, France, Germany, and Holland. World War I caught him in Brussels, Belgium, and pretty nearly a prisoner of war. He later served with the British army and came to Canada in December, 1919, to join the editorial staff of the *Montreal Daily Star*, with which he is still connected.

IMPORTANT decisions preprinted from *Public Utilities* Reports may be found in the back of this issue.

THE next number of this magazine will be out September 28th.

The Editors

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

WALTER LIPPMAN
Columnist.

"No man will ever regret that in this fateful hour he did too much. He will never be forgiven if he does not do enough."

PHILLIP MURRAY
President, Congress of Industrial Organizations.

"I have never liked the 'Little Steel' formula. I attended its baptism, I participated in its confirmation, and, by the grace of God, I hope I will be at its wake one of these days."

CLARENCE CANNON
U. S. Representative from Missouri.

"Our national food problem is not scarcity but surpluses. We are shipping more hogs than packers can process. We are marketing more eggs than the plants can store. We have produced more cattle than we can feed."

JOSEPH W. MARTIN, JR.
U. S. Representative from Massachusetts.

"We will win the war, regardless of what happens to the political fortunes of any one individual, and through the good, sound common-sense characteristic of our people we will steer the world into a future blessed with peace, prosperity, security, and happiness."

ALFRED M. LANDON
Former governor of Kansas.

"A growing mutual understanding and respect for each other's ways among the peoples of the world will do more to restore, build, and maintain peace in the world, than all the police forces of Christiandom. It means making peace so attractive to all nations that they will not want to risk breaking away from it."

THOMAS E. DEWEY
Governor of New York.

"Three immediate and fundamental purposes have guided our work to strengthen the state government—first, to win the war; second, to prepare for a rapid and smooth readjustment to peaceful pursuits, once complete victory is won; third, to preserve and develop that freedom at home for which our young men are fighting abroad."

HENRY A. WALLACE
Vice President.

"The American Fascists are most easily recognized by their deliberate perversion of truth and fact. Their newspapers and propaganda carefully cultivate every fissure of disunity, every crack in the common front against Fascism. They use every opportunity to impugn democracy. They use isolationism as a slogan to conceal their own selfish imperialism."

EDITORIAL STATEMENT
Seattle Daily Times.

"Nothing has ever quenched the zeal of professional advocates of public ownership, and nothing ever will. With some of them, the first article of economic and political faith is that everything belongs to all the people, and every form of service is a public function. Others are advocates of public ownership for their own personal profit; many have made a living at it for years."

WILLIAM H. WILBUR
Brigadier General, U. S. Army.

"Wars are won by fighting men, individuals who have the courage to overcome danger, the stamina to withstand hardships of the toughest kind, the individual will to keep going forward, regardless of murderous hostile fire, regardless of overpowering, sodden fatigue, regardless of the fact that their comrades have been killed and wounded. Those are the men who protect our freedoms."

ERIC A. JOHNSTON
President, United States Chamber of Commerce.

"Depression? There need not be one. There will be a hesitation period during reconversion, then a period of high production for from two to seven years. Much wealth has been destroyed. The only way to create new wealth is to make more things desirable and available to more people, an opportunity for more people to own homes, refrigerators, washing machines, and automobiles—and vacuum cleaners."

VICTOR VON SZELISKI
Writing in The Wall Street Journal.

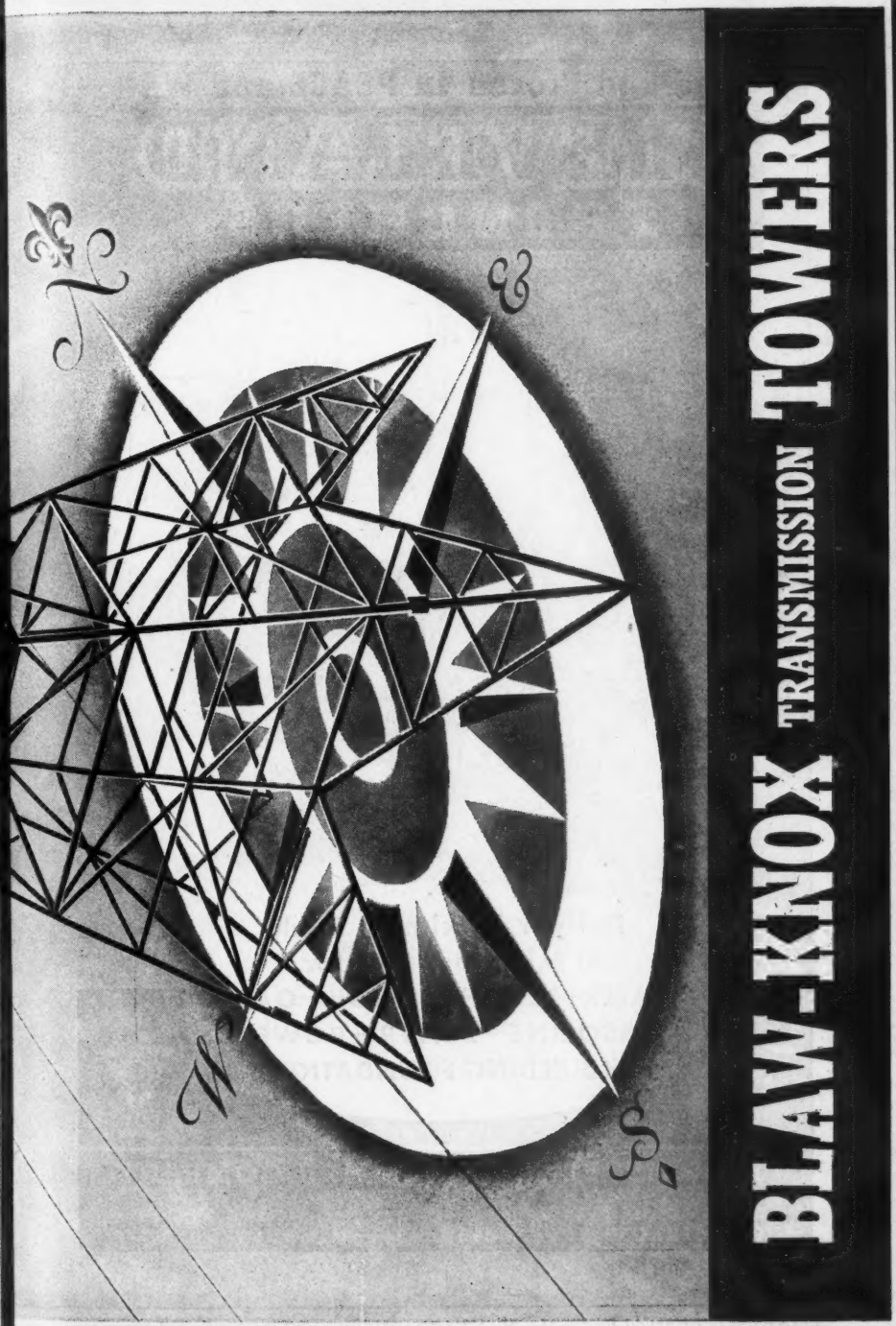
"If electrical engineers in this country could look for employment only to the TVA, the Boulder dam, and Grand Coulee no one would consider that they had economic and political freedom in the same way that farmers do. The situation would not be much altered if TVA, Boulder dam, and Grand Coulee were privately owned corporations and the only three places where electrical engineers could work."

PAUL G. HOFFMAN
President, Studebaker Corporation.

"It is clear that private business, in which I include agriculture and the professions, must provide for the overwhelming proportion of those Americans, who, after this war, will be needing and seeking jobs. No governmental employment yet planned, let alone blue-printed, can take up more than a fraction of the unemployment slack that would exist if private business were not able to go full steam ahead when the war ends."

JOSEPH C. O'MAHONEY
U. S. Senator from Wyoming.

"Democratic society is the most difficult of all societies to maintain, but it is the society which is natural to man, because man is free. The theories of Fascism and Communism are defeatist theories. They have been conceived by men who do not believe that the individual is competent to direct the modern economy. It is because of their lack of faith in man that they erect the state as the source of all power and authority."



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The Mercoid DA Pressure Control is the ideal limit control for all automatically fired steam boilers. The DA Temperature Control is designed for hot water jobs.

Both of these controls are also available in a number of ranges for many important industrial applications. They are the favorite among leading engineers who know the difference.

The above illustration briefly points out some of the main features which are distinctly Mercoid. They are vitally essential for accurate and dependable control performance.

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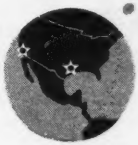
SHOWN HERE under construction is a refinery tower designed to remove undesirable tar materials from high-octane gasoline.

Because the steel shell of the tower will not withstand the corrosive action of separation acids, a chrome alloy lining was specified. 10,253 separate plug welds, each one impervious to acids and able to stand extreme pressures and temperatures, were necessary to secure the tower lining.



An unusual fabrication job, it is another mission completed by Consolidated Steel Corporation for war industries and armed services. It is an example of the craftsmanship Consolidated Steel will devote to the construction needs of peacetime America. Inquiries looking to future construction are solicited. Address the president.

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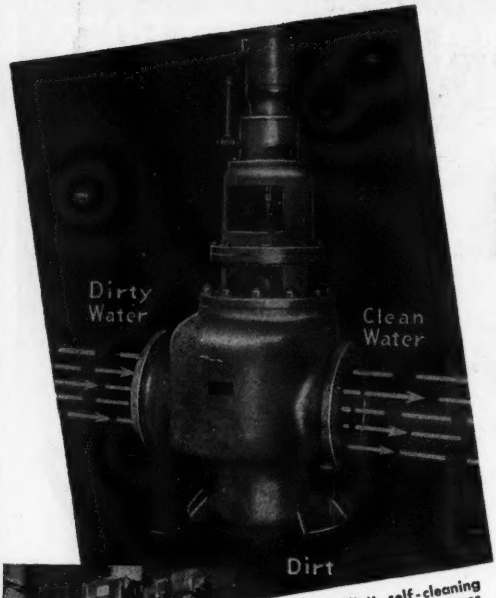
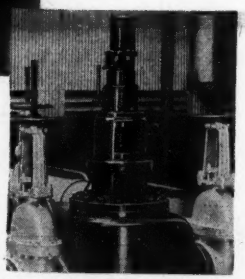


How the Elliott self-cleaning strainer is installed. Water goes straight through, foreign matter caught and ejected downwards.

One of three large self-cleaning strainers for bearing cooling water, in a central station.



One of five Elliott 14" self-cleaning strainers in a hydro plant. They protect fire pumps, transformer cooling and generator cooling coils.

ELLIOTT

SELF-CLEANING STRAINERS

Without attention beyond occasional supervision, this unit will strain incoming water, remove and eject abrasive or other foreign matter, and deliver clear water for service use.

The straining process is continuous. A geared motor slowly rotates a sealing ball which blocks off each straining section in turn. Back-flow of water then flushes the isolated straining section, driving the entrained impurities out through the bottom of the unit, and the cleared section again takes up its straining job.

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Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

SEPTEMBER

14	Th	¶ *Illuminating Engineering Society convenes, Chicago, Ill., 1944.*
15	F	¶ *Edison Electric Institute, Prime Movers Committee, will hold meeting, Pittsburgh, Pa., Oct. 2, 3, 1944.*
16	Sa	¶ *National Safety Congress of National Safety Council will convene, Chicago, Ill., Oct. 3–5, 1944.*
17	S	¶ *Edison Electric Institute, Electrical Equipment Committee, will convene, Pittsburgh, Pa., Oct. 5, 6, 1944.*
18	M	¶ *International Association of Electrical Inspectors, Eastern Section; starts meeting, New York, N. Y., 1944.*
19	Tu	¶ *United States Independent Telephone Association will hold convention, Chicago, Ill., Oct 10–12, 1944.*
20	W	¶ *Indiana Electric Association starts meeting, French Lick, Ind., 1944.*
21	Th	¶ *Southeastern Electric Exchange starts session, New Orleans, La., 1944.* ¶ *American Standards Association opens meeting, New York, N. Y., 1944.*
22	F	¶ *Maryland Utilities Association starts session, Baltimore, Md., 1944.*
23	Sa	¶ *South Dakota Telephone Association will hold meeting, Mitchell, S. D., Oct. 19, 1944.*
24	S	¶ *American Public Works Congress convenes, St. Paul, Minn., 1944.*
25	M	¶ *Association of Iron and Steel Engineers will hold annual meeting, Pittsburgh, Pa., Sept. 25–27, 1944.*
26	Tu	¶ *Municipal Electric Utilities Association of New York State starts meeting, Lake Placid, N. Y., 1944.*
27	W	¶ *National Metal Congress will convene, Cleveland, Ohio, Oct. 16–20, 1944.*

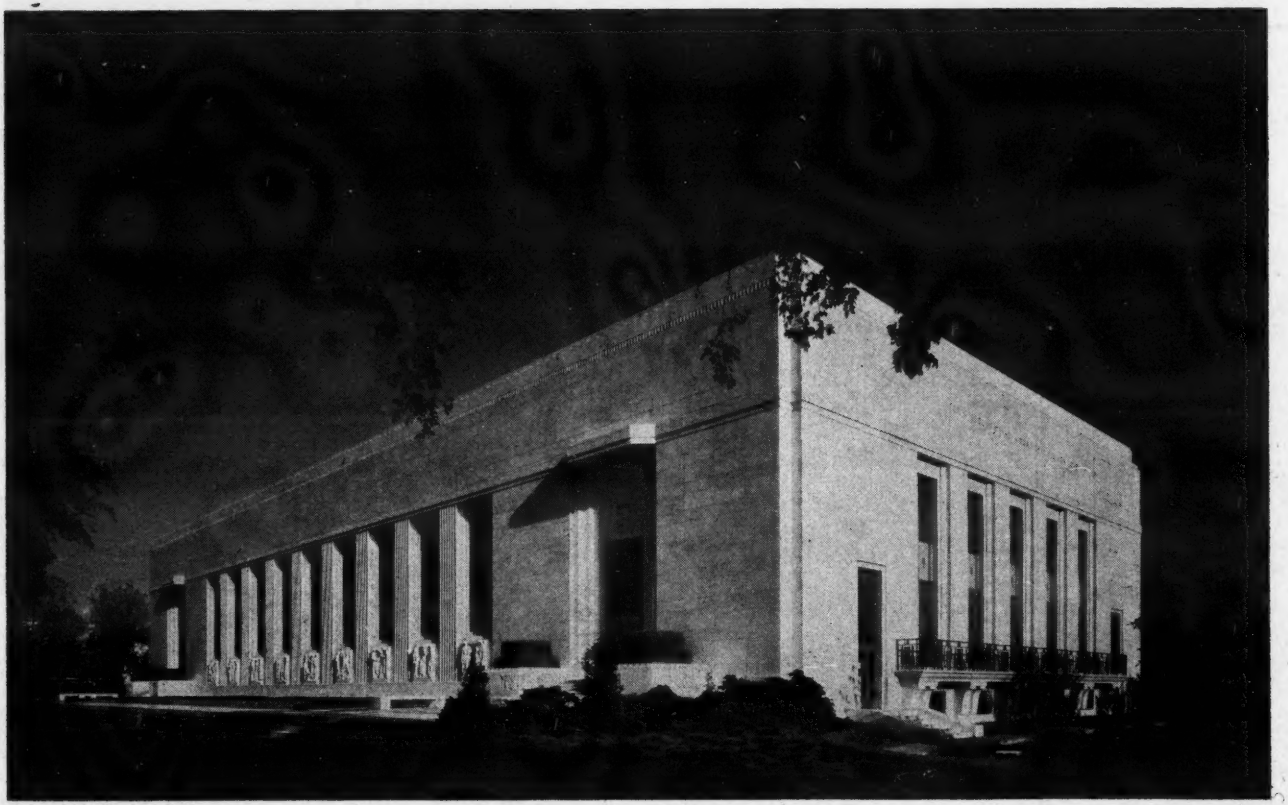

Photo by Horydczak

Folger Shakespearean Library (Washington, D. C.)

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Public Utilities
FORTNIGHTLY

VOL. XXXIV; No. 6 SEPTEMBER 14, 1944

Recognition for Utility War Effort

Should some joint action of the armed forces or major war agencies (as distinguished from interdepartmental or subbranches of the government) authorize a special token of recognition to be awarded to public utility companies which have responded to the call by performing meritorious service in the war effort above and beyond the call of duty?

BY LARSTON D. FARRAR

THE utility industry of the United States, which has turned in one of the most meritorious production, distribution, and servicing jobs ever undertaken and completed in comparable time in the history of the world, not yet has been recognized officially for its activities in a manner befitting its contributions.

What the utilities have done is familiar to most everyone, in a general way, and is known in great particular by the men who make the utilities tick. Just several weeks ago, PUBLIC UTILITIES FORTNIGHTLY carried an issue entitled: "A Salute to Public Service," in which spokesmen for the government, the gas distributing companies, the telephone companies, and the operating electrical distributing companies pointed to the tremendous challenges met and overcome.

IF there still be those who doubt that the utilities of America have played a vital—yes, all-important—part in

making the Arsenal of Democracy possible, listen to these words from men who headed up that production job—the men of the Army and the Navy.

Here is Major General Sherman Miles, Commanding General of the First Service Command, speaking:

> The performance of the utility industry in supplying a dependable source of power to meet the emergency requirements of the armed forces is greatly appreciated . . . I happen to have means of knowing, all through this war, how closely utilities of the whole country, as well as New England, have coöperated with the Army and the Navy.

Here is Colonel G. W. Gillette, First Service Command Engineer of the Corps of Engineers, speaking:

> The utilities companies made a thorough survey of the situation, of the electric service already available. Maximum emergency power requirements were determined, having in mind the possibility and fear of air raids and bombing attacks. A survey of available reserve equipment, supplies, and tools was made. Methods of communication were set up between the Post Engineer and the utility serving his installation.
>
> The Utilities Wartime Aid Program contributed greatly to expedite the military construction program and to insure replacement of damaged installations, in the case of emergency. Here in this Service Command we are happy to say that we have had the fullest coöperation of all public utilities whenever needed.
>
> This coöperation has made it possible to save much critical man power and material. The skill and experience of trained utilities employees have been made available to help solve routine problems on a gigantic scale, as well as to give valuable assistance in emergencies.

Or hear Captain H. C. Fischer (CEC) USN, District Public Works Office of the First Naval District, speak:

> . . . I want to say that while the railroads and many other industries have done a simply remarkable job in meeting the extraordinary wartime demand, the utilities have been right in the forefront and second to none when they were called on to furnish the power needed for all other production.

Or listen to Lieutenant Colonel T. J. Rouner, Deputy Service Command Engineer, Corps of Engineers, as he addresses a group of utility officials:

> I wish to congratulate you gentlemen upon the fact that, due to your own foresight and ingenuity, we have never found the electric circuits empty; there has always been current available when we called for it. Only once, do I recall, was there a serious threat of a power shortage, and any actual shortage on that small isolated system was averted by a spontaneous and determined effort on the part of all—utilities, public, and Army—to curtail unnecessary services.

Listen to Colonel Sumner Waite, Chief of Staff of the Second Service Command, speak on coöperation between the Army and the utilities:

> I wish to express to you the appreciation of the entire Second Service Command for the outstanding coöperation and assistance which have been rendered to the War Department before and since your Utilities Wartime Aid Program was initiated during the early part of 1942. The conception and organization of this program, on a national scale, has won the commendation of the armed forces.
>
> Anything to be successful must be well-planned, and the plan energetically prosecuted. We, in the Army, admire good planning, and know that the utilities industry did a grand job of planning power facilities for the war effort.

And here is the Navy speaking again, through Captain Lewis William Bates, Power Division Head, Construction Department of the Bureau of Yards and Docks:

> In arranging for power supply from outside sources, the bureau has found that in almost all cases the utility companies have been very coöperative. In many instances, the companies have made large investments at their own expense for the construction of facilities to serve our stations. When it was considered that the establishment in question might be discontinued after the war and before the utility could have earned an adequate return on its investment, then the Navy has advanced the necessary funds for construction purposes under an arrangement for refunding the amount by credits of at least 10 per cent on the monthly bills for power.
>
> We look forward to a continuance of the very able assistance of the engineers of the utility companies in giving our field representatives and their operation personnel tech-

nical advice and assistance based upon their long experience, so that our difficulties may be overcome, emergencies may be met, and our electric systems may give adequate and dependable service in a satisfactory and economical manner.

Or if further assurances were needed by the public or utility employees that the utility industry has played a great part in the war, perhaps these words from J. A. Krug, formerly director of the Office of War Utilities, serve:

> Power men—public and private—should be proud of the job that has been done in providing power supply. Power has never been too little or too late!
>
> There is today no shortage of power.
>
> This is in sharp contrast to the situation as to many other vital necessities. This pride is justified not alone because adequate supplies of power are being provided for the war program. The job has been done with the minimum possible interference with the rest of the war program.

THESE testimonials to the worth of the utilities of America are not idle talk; they were made by men who had seen the utilities in action and who knew whereof they spoke. Yet, for reasons inexplicable to this writer, the utilities of America have not received the recognition they deserve in tangible form. True, they can print these statements in the newspapers; they can have the testimonials read on the air; but, day by day, they have no tangible method by which they can present to their employees and to their consumers the obvious truth that they have played such a vital part in the war.

Other industries have had a chance to work for an "E" pennant, which, when earned, could be flown proudly from the top of the highest available flagpole, and could be worn (in button or other form) on the lapel of workers' coats. But not so the utilities, which have made possible the production records of more industries than can be imagined.

If you want to find out why the utilities have been able to coördinate their work with Washington officialdom so well, you might talk with Tom P. Walker, president of the Council of Electric Operating Companies, with headquarters in Washington, D. C. This group, formed shortly after Pearl Harbor, has done wonders without benefit of publicity or public back slapping.

To learn of the contribution of the gas industries, you might meet Ernest R. Acker, president of the American Gas Association.

To learn about the contribution of the telephone industry, talk with Charles F. Mason, president of the United States Independent Telephone Association.

But to learn why the Army and Navy have such high praise for utilities, it would be an excellent idea to talk also with Dan A. Sullivan, engineer and power consultant for the Commonwealth Edison Company, Chicago, Illi-

¶ "OBVIOUSLY . . . *it is not the job of the utilities themselves to agitate for a special-type award to be given to those gas, electric, telephone, and other utilities which have rendered outstanding work. Yet, everyone knows that some kindly angel is not going to fly down to Washington to agitate for such an award. Utilities will simply have to make the facts available—and let the record speak for itself.*"

nois, who is director of the Utilities Wartime Aid Program, which has been so helpful throughout the nation in coördinating the work of private utilities with the work of the Army's Corps of Engineers, and with comparable branches of the Navy and the U. S. Maritime Commission.

IN the early part of 1942, when it became obvious that the nation was faced with the greatest power demands ever to face the utilities, and when construction of Army camps and naval installations was being projected at an amazing pace, Mr. Sullivan started the Utilities Wartime Aid Program in his city. Later, through Army instigation, the program grew to include the Sixth Service Command, embracing Illinois, Wisconsin, and Michigan, with headquarters in Chicago. The War Department, through its Corps of Engineers, was interested from the very first in Mr. Sullivan's plan, and after it had worked for some months in the Sixth Service Command, he was directed to put it into effect throughout the nation.

Today, as he looks back on more than two years of effort, he reports marvelous coöperation among utilities wherever he has turned throughout the nation. This coöperation, he emphasizes, came not alone from the private utilities, but from the Tennessee Valley Authority, the Bonneville Administration, and from hundreds of publicly owned utilities of every description throughout the nation.

THE Utilities Wartime Aid Program features the following wartime aid services, according to Mr. Sullivan, who pointed out that it would be difficult to set down every phase of activity in which utilities have coöperated with the Army, Navy, and Maritime Commission in seeing to it that all wartime power demands were met:

1. Draw up plans in each service command that would enable the Army division engineer to mobilize quickly the necessary equipment, men, and materials in the events of damage by storm, flood, or enemy action.

2. Provide or loan transformers, switches, line materials, poles, and miscellaneous supplies in the power companies' stock.

3. Loan line trucks, construction tools, and hot-line equipment.

4. Assist the maintenance crews of the stations with trained linemen or other employees whenever required. This service is frequently utilized for small construction jobs and is quickly available in event of emergency.

5. Give access to private telephone and dispatching lines to avoid overloading local telephone circuits in event of emergency and provide essential communications when local telephone lines are out of service.

6. Keep the post engineer staffs currently informed as to the availability of key men who should be contacted in the event of outage.

7. Provide where necessary facilities and personnel for routine or special tests of posts' equipment and supplies, such as relays, cable, circuit breakers, etc.

8. Furnish technical advice on the many problems which arise in the operation of substations, distribution facilities, and utilization equipment of these "soldier cities."

9. Furnish engineering assistance in planning additions or changes in the post distribution systems.

10. Give assistance in developing black-out procedure.

11. Maintain, through its representatives, routine contacts with the posts' engineers' staff so as to be thor-

Recognition of Utilities' Worth in War

"As to reasons why no general award has been planned for utilities that have proved their worth in the war, there seems to be no definite or clear explanation. Some think that it is simply because the utilities had proved so well that they could do a good job in other years that they were just taken for granted when war demands had to be met."

oughly familiar with the posts' problems, and to be readily available for consultation.

12. If possible, set up training programs when necessary to assist armed forces in training electricians and high-tension men.

13. Repair failed transformers and other equipment at cost, contingent upon the post furnishing priority assistance to enable replacement of materials used in repair.

As Mr. Sullivan points out, several hundred operating electrical utilities have agreed voluntarily to coöperate in this organized plan of maintenance for the duration of the war, guided by the War Department through the repairs and utilities branch, construction division, Office of Chief of Engineers, and with the assistance of the War Production Board.

"Already, the many years of operating experience and research of the nation's electric operating companies, as well as their equipment and materials, are being used with excellent results," he adds. "Post engineers and division engineers in charge of the various service commands feel much more secure in regard to power failures than they did before the program started. The record is replete with instances that typify the splendid coöperation of the utilities participating in the program."

All of which brings us back to the pertinent question: Have these coöperating utilities, by and large, been given a medal, literally or figuratively, for their outstanding work and coöperation? Is there anything on the record—for the public to see—today to show the difference between those utilities which have coöperated in this and other farseeing programs and those if any which may not have coöperated wholeheartedly? The answer to that

question is seemingly in the negative. As a matter of fact, the utilities have been given no special recognition by any branch of their government.

Obviously, of course, it is not the job of the utilities themselves to agitate for a special-type award to be given to those gas, electric, telephone, and other utilities which have rendered outstanding work. Yet, everyone knows that some kindly angel is not going to fly down to Washington to agitate for such an award. Utilities will simply have to make the facts available—and let the record speak for itself.

MR. SULLIVAN takes the same attitude as does many another important figure in the utility industry: The industry itself must not be found agitating for special recognition. However, he is willing to say for the record:

"In the face of the marvelous record of coöperation given by the industry as a whole to the armed services, many persons cannot understand why the utilities have not been given some tangible form of recognition for their work. If only the private power industry were to be recognized, that would be a different matter, and would likely be viewed as selfish public relations. But this is not the situation. All utilities have taken part in the marvelous job that has been done and all utilities feel that they should have a chance to qualify for whatever tangible form of recognition is given, because, by and large, all utilities have done the same kind of swell job."

Privately, also, other utility leaders point out that an award similar to the "E" award would be a great boost to employee morale today. Utility workers throughout the nation, seeing the workers of other industries proudly wearing an Army or Navy "E" button, feel that they have not been recognized for their contribution.

Most important of all, the public as a whole has not been informed adequately of the utilities' contribution. The railroads have been able to get over their message quite well, and the telephone companies, as a whole, have been able to show their worth in the war program. The electric and gas utilities' radio and publicity programs have been well received. But utilities generally have been too busy doing a great job to boast about it to their immediate consuming public, company by company.

This writer, after investigating every angle of the case, is willing to stick his neck out and say flatly that some type of award should be given to qualifying utilities by either the Army and Navy or the Office of War Utilities. The award may not speed production—it does not need speeding in the case of electrical utilities—but it would certainly benefit the employees of the companies, make easier the way ahead, and give to the nation as a whole an idea of the work that utilities have been, and are, doing.

IT is true that some utilities have won particular awards in various parts of the nation. Nothing that has been written should be construed as detracting from the worth of these awards.

One such award, for example, was given in the form of a citation by Rear Admiral W. R. Munroe, Commandant of the Seventh Naval District, last February 1st, to the Florida Power & Light Company in an impressive ceremony in the west distribution yard of the Miami steam electric station in

Miami. This citation, given in appreciation of performance of duty in the field of electric utility service beyond normal responsibility, was given by Admiral Munroe under his power to make citations for meritorious action under him at any time.

It is understood that such citations can be given by Naval Commandants whenever they desire, but that many Commandants do not participate in such activities with business, because they fear they will become involved in a multiplicity of requests.

A similar award was given to the San Diego (California) Gas & Electric Company in August, 1943.

The Duquesne Power & Light Company of Pittsburgh received the Office of Civilian Defense Recognition of Service Award for its activities in the field of civilian defense.

On June 23, 1944, the Certificate of Appreciation of the Chief Signal Officer was presented to the five major communications companies in New York at special ceremonies by the Chief Signal Officer himself, Major General Harry C. Ingles. Companies receiving this high honor were the Western Union Telegraph Company, the American Telephone and Telegraph Company, RCA Communications, Mackay Radio & Telegraph Company, and Commercial Cable Company. Other telephone companies have since received it.

The Ohio Independent Telephone Association previously had been awarded a Certificate of Appreciation for its contribution, as had the Alabama Independent Telephone Association, the Wisconsin State Telephone Association, the Mountain States Telephone & Telegraph Company, and the Pacific Telephone & Telegraph Company.

WITHOUT detracting from these various awards at all, it should be pointed out that, by and large, companies with just as good records of service and coöperation with all branches of the government have not been honored. By and large, every utility has maintained high service standards because it was required to do so and no uniform plan of recognition for those who topped this high standard has been worked out.

As to reasons why no general award has been planned for utilities that have proved their worth in the war, there seems to be no definite or clear explanation. Some think that it is simply because the utilities had proved so well that they could do a good job in other years that they were just taken for granted when war demands had to be met. This group points out that the utilities did not have a "bogey man" to avoid, such as the railroads, who went into this war under the shadow of a sad experience in World War I, when con-

¶ "THE *electrical utility industry of the United States has done a job that has helped save freedom for all. So did the gas, telephone, and transportation carriers. This has not yet been recognized officially. No medals have been given the utilities for performing meritorious work above and beyond the call of duty.*"

ditions became so bad that the government felt constrained to take over the lines—and then proceeded to make matters worse for all concerned.

Another group of utility men feels that for a long time, the private utility industry of the United States was a wolf to a great many persons, including not a few Washington officials. According to this group, the Little Red Riding Hoods of Washington in their heyday painted some rather wild and wooly word-pictures of the electrical utility wolf, attributing to him many troubles unrelated to the economic problems they sought to solve.

By a constant campaign of crying "Wolf, Wolf!" they were able to convince a large number of Americans that the private electrical power industry indeed was a menace to the stability of the nation, and, as a result, they were able to pass national laws to restrict the wolf cutting deeply into his hide, and restraining if not tormenting him.

BUT the fairy tale, in this case, did not come out like the Little Red Riding Hoods thought it would. When she ran into her grandmother's house, she found there a 3-headed monster named Hitler, Tojo, and Mussolini, and quickly discovered that she had an ally in the utility wolf instead of an enemy. She called on the wolf for help, and, surprising to some, the wolf went to the rescue.

Today, the wolf has helped save Little Red Riding Hood's skin.

But, officially, it is a little difficult for her to acknowledge it. The kind woodsman who came by to put an end by force of arms to the 3-headed monster was given an "E" award for his contribution; the machinist and steel worker who slipped up to hand little Red Riding Hood a gun both were praised publicly. But the mythical wolf —the utilities—had past complications of political history, perhaps. Anyway, so far, some folks in Washington hope that he will politely go back to his normal pursuit and forget about his share in the victory.

The facts remain clear: The electrical utility industry of the United States has done a job that has helped save freedom for all. So did the gas, telephone, and transportation carriers. This has not yet been recognized officially. No medals have been given the utilities for performing meritorious work above and beyond the call of duty. Why?

"Bill of Rights" for Business

"1. Business requires three kinds of incentives—management, labor, and capital.

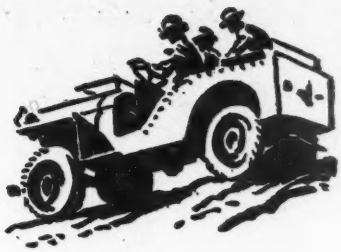
"2. To preserve these incentives, business should be given free scope to trade honestly, in competition, for a profit.

"3. The business field should be free from invasion by government.

"4. Neither business nor the individual should be subjected to the arbitrary action of bureaucracy.

"5. Business should be enabled to protect and to exploit the capital values in good will."

—ISAAC W. DIGGES,
Counsel, Association of National Advertisers.



Woman Power Keeps 'em Rolling

How New Orleans Public Service is solving a shortage of labor, a problem that confronts all utilities today.

By DAVID MARKSTEIN

When Mars beckoned with his bony finger to the United States on December 7, 1941, one of the things he accomplished was to rob Marie Calhoun of New Orleans of her family. Marie is a grandmother. Her husband and son are in service, the former with the Coast Guard, the latter somewhere in the Pacific helping his Marine buddies pin back the ears of the snaggle-tooth boys from Nippon alley. Most women of Marie's age would be proud to just sit and brag of such a fighting family—but not she. Marie is in there pitchin' too, in an industry so essential that it is doubtful whether the Crescent city's other war plants could long function without the help of her and her sisters.

For Marie conductors the streetcar that carries the men who stand behind the man behind the gun. If Marie did not conductor the streetcar, the men could not ride, and thus could not stand behind the man who stands up to the Japanazis. In a literal sense that is true, because man power is so short in New Orleans that transit service would necessarily be curtailed without the services of such as Marie.

Public utilities, like every other industry in America, have met and largely solved many pressing wartime problems. There have been increased demands and shortages of equipment to plague them, but no problem has been quite so pressing as the dilemma of how to meet growing calls by drawing from a pool of labor that is very fast going dry.

One answer to this problem is the use of woman power such as Marie Calhoun. First in peacetime businesses that could not compete with war plants at high wages, then in the war factories themselves, finally in the very armed forces that had gobbled up all the men, women have donned street dresses, overalls, and uniforms and moved into the breach. The result has been sometimes good, sometimes unfortunate, but generally quite satisfactory.

Along with the others, many public utility companies have turned to employing women. Experience in war plants and the armed forces has proven that they can handle men's work, even that calling for heft and brawn. The manner in which these little ladies have acquitted themselves in difficult welding, riveting, and even portering jobs is reflected in a current wave of cartoons that depict Mr. Postwar Husband washing the dishes and caring for baby while Mrs. earns the family bread by the sweat of her dimpled brow.

AN example to the point is New Orleans Public Service Inc., gas, electric, and transit utility. In addition to an estimated sixty thousand men drawn from New Orleans into the armed forces, newly opened war plants like fabled Higgins Industries have tapped the labor reserve with high wage inducements. Only last May, a WLB Group One classification (acute labor shortage area), which would have cut off new war contracts and frozen all jobs, was averted by the skin of the city's collective teeth.

Unable to play the game of wages for stakes that the war plant boys fling about, Public Service was at its wits' end to find necessary bus and streetcar operators. Its facilities, WLB agreed, were as necessary as those of any company engaged in the war effort. Street railway and bus systems, a public necessity vital even to the war plants that were drawing away their labor, were hardest hit.

So what to do?

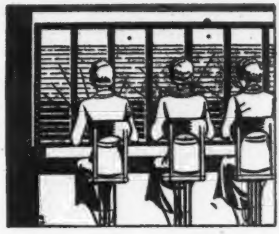
"In March, 1943, we saw that the situation might soon be desperate," says Public Service personnel manager Milton H. Van Manen. "Of all possible solutions, employment of woman power seemed best. This called for a complete revision of company policy. The idea of employing women transit operators was altogether new in this neck of the woods.

"Public prejudice, just adjusting to the sight of overalled women at Higgins and other new war plants, had to be brought round to accepting them as streetcar conductors, motormen, and bus drivers. It was a difficult job, for we not only had to recruit the women themselves, but persuade the traveling public that they were performing a real war job.

"To do both selling jobs, we resolved on playing up a Molly Pitcher angle. Molly Pitcher was the Revolutionary War lass who jumped into her slain husband's place to keep his gun dishing it out during a hot battle. Molly was the great-grandmother of Jenny the WAC. So for our first women operators we picked wives of former employees now in service."

THE plan has since grown to such proportions that over three hundred out of almost fifteen hundred transit workers of New Orleans Public Service are women. How to fit them in with the men, using enough kid gloves to keep the women satisfied, and how win coöperation instead of ridicule from the public are problems that need constant solving.

The girls were resented at first by many old-timers, as old-timers everywhere resent the intrusion of women into their little worlds. But even the resentment of the 20-year boys has softened under the women's obvious good record. Van Manen's office needs tact on all sides. The men retain their



Employing Women by Public Utilities

"ALONG with the others, many public utility companies have turned to employing women. Experience in war plants and the armed forces has proven that they can handle men's work, even that calling for heft and brawn. The manner in which these little ladies have acquitted themselves in difficult welding, riveting, and even portering jobs is reflected in a current wave of cartoons that depict Mr. Postwar Husband washing the dishes and caring for baby while Mrs. earns the family bread by the sweat of her dimpled brow."

seniority rights whereby choice hours go to the operators on each line longest with the company. But women have been paid the same wages, with same overtime opportunities. They receive training pay, uniform allowance, and identical privileges as the men.

Legal pitfalls await the utility hiring women for men's jobs. Louisiana, like many other states, has laws prohibiting the working of women beyond certain hours. This was a poser at first for Public Service, as transit operators cannot stop their busses and streetcars for thirty minutes' rest that the Louisiana law says women must have after toiling for six hours.

The matter was laid squarely before the state labor commission. "Sure," they said, "we can fix that. You're in *war* business." Permission was extended Public Service to ignore this proviso—for the duration only. A clause in Louisiana's statute, like those in many other states, permits the labor authorities to do this at discretion for 6-month periods. The dispensations, Public Service is assured, will continue to be forthcoming as long as the need is acute.

WOMEN have actually hung up better records than men in some respects, Public Service finds. As a group, they are more adaptable, train more easily, and handle the bookkeeping part of their jobs—making trip sheets and such like—with greater accuracy. As conductors, they are more inclined to politeness — although politeness is a part of all operators' training. Their safety records on vehicles of all kinds are better, this in the face of all the crusty jokes about women drivers (which most transit riders happily forbear to make).

That old bugaboo of the war effort —absenteeism—Public Service finds much higher among the women. Which doesn't surprise or worry them too much. Women with children—and most of Public Service's are married—naturally worry about their offspring. On cold and stormy days, a good percentage of them do not show up. What worries the utility executives more than this absenteeism is high turnover—usually 5 to 6 per cent each month. "Last month 7 per cent went over the hill—and, brother, that ain't so good," says Van Manen.

Those who remain, however, like the work. This is what some of them say:

"Mine is the best job in town for women." "I like the hours, the pay, the way I'm treated." "My husband is as proud of my record as I am." "I like to feel I'm part of the city's transportation system." "I've had no trouble at all." "I'd rather be a conductor than anything else." There's no tongue in cheek when they say it.

Van Manen doesn't believe there will be a place in the postwar utility scheme for women. "First, we've probable unemployment to consider. The jobs must go to men—our women understand that their jobs end when hostilities do. Then, judging by the number of former employees who have already returned from service to claim their jobs, our ex-operators are going to want back—and we want them."

COMPETITION for woman power is as keen today as the play for man power. Where to find it is a problem—and a bigger one is how to get it in competition with higher-paid war industries. For answers, Public Service turned to advertising.

The advertising department plunged into recruiting with a zest. A complete campaign of newspaper, radio, and printed ads was prepared. The campaign included almost daily classified appeals; large display advertisements; radio spot announcements and 5-minute programs; car cards and displays; many printed pieces for mailing and distribution to employees. A real *merchandised* recruiting program was mapped out.

Classified appeals Public Service has found effective were those playing up the angles of pay (by regular standards $200 a month is not to be sneezed at), pleasant work, contribution to the war effort, and steady employment. The women were interested first in money—the men in job security.

The known effectiveness of the patent medicine testimonial formula was used in newspaper display advertising. Headlines like—" 'When everybody's so nice it makes your job easier,' says Katie Garner, ace woman bus operator"—brought prospective operators by the dozen. The ads, using about quarter-page space, featured a cut of the operator, with blocks of copy below. One continued the testimonial, telling how pleasant the work and how satisfactory the pay of an operator. In a heavy ruled box, strong selling copy explained that this was truly taking a man's place in necessary work, went into how simple it is to train and work on transit lines.

ON the air, Public Service went in for interviews. Satisfied operators were called to the mike to explain how they got that way. On some programs, a male or female voice interviewed the happy women, going over

¶ "PUBLIC *utilities, like every other industry in America, have met and largely solved many pressing wartime problems. There have been increased demands and shortages of equipment to plague them, but no problem has been quite so pressing as the dilemma of how to meet growing calls by drawing from a pool of labor that is very fast going dry.*"

reasons why working for the utility was so ardently to be desired. Typical questions and answers used were:

Q. Did you have difficulty learning?

A. I was surprised how quickly I learned . . . the instructors made things so clear . . . that I knew I could do it.

Q. What does your husband think?

A. He's a Public Service bus operator too—and as proud of my record as I am!

Q. How do you like your work?

A. I say this is the best job in town for women. I like the hours, the pay, and especially the way I'm treated.

That is the stuff of conviction. As proof of the pudding, such programs have helped immeasurably to keep 'em rolling in New Orleans.

Folders, letters, cards, and all kinds of printed advertising directed toward nonworking women did their share too in Public Service's all-out campaign. One effective piece showed cuts of male and female operators—shouting *"It's Women's Work Too."*

Some direct advertising went to employees, urging them to contact friends for utility jobs. Indeed, some of Public Service's best recruiting results came from the efforts of employees, stimulated by advertising and the offer of a reward.

A FOLDER was sent to each operator detailing all particulars of a transit job. This was for passing on to prospects. Along with it, a letter over the president's signature offered $10 bonus to each employee securing a recruit.

The offer was qualified that recruits must remain through their training period and for thirty days after, but it brought remarkable results. An introduction card for recruits to present went with the letter and folder to assure operators that they would receive proper credit—and extra pay.

All possible advertising media are used. In addition to the three major media, car cards—interior and exterior—proclaimed the need to transit riders. A customer publication usually employed to bring housewives recipes and conservation information was turned over to the drive, taking Public Service's recruiting message into the home direct to women who might be prospects.

Once hired, the women are given intensive training. Making skilled utility workers out of former housewives is no easy task.

Class work opened the course; for two or three days, the lassies learn from book and blackboard in the company's classrooms. There they discover the how of transfers, learn simple clerical work that consists of filling designated places on a company form, a little background information on the corporation

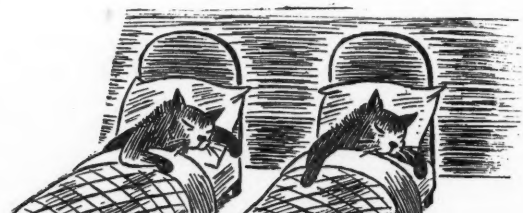
they will represent to 650,000 riders each day, and thirty-two "rules of the road."

Class then adjourns to one of Public Service's mammoth "barns," where the trainees are given actual practice on busses and cars. First they are taken to a remote suburban line where there are no intersections to plague them or possibly endanger pedestrians. There they make practice stops, give change in answer to a command from an instructor, learn all the intricacies of their business to be.

Finally the women ride with an experienced operator on cars that pick up real passengers. When this instructor is satisfied that his charges have mastered their craft, they are issued uniforms and go to work in all their glory as full-fledged women behind the men behind the man behind the gun.

By such thorough recruiting and training methods—and a liberal use of good business imagination—New Orleans Public Service is solving a problem that confronts all utilities today. When peace comes, the company can face its consumers, proud of the way a very necessary duty has been performed.

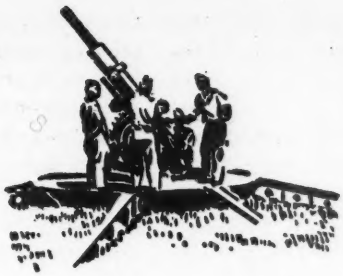
And the women? They're proudest of all!



Postwar Train Sleepers Twice As Comfortable

The Pullman Company is not going to make any more old-style sleepers, with upper and lower berths and curtains on the aisle. When the 6,000-odd sleepers now in use wear out, they will not be replaced. Instead, the Pullman people plan a new-style sleeper, with low-cost berths selling at about $1 a night, to meet the expected postwar competition from de luxe coach service on streamline trains at regular prices.

The new-style sleepers will have better ways of handling luggage and better washroom facilities, without the annoyance of making up and knocking down upper berths at the expense of passenger comfort. There will also be high-class travel specialties. Pullman Company says the trend is towards single and duplex roommettes, sleeping car compartments with private wash basins, toilet facilities, and a door that closes off the rest of the car.



Fitting Future Veterans Into Postwar Jobs

G. I. Joe Will Need a Reindoctrination to His Old Job After He Comes Marching Home.

By LIEUTENANT GUY E. TRULOCK, USNR

THE subject of postwar planning has top billing in the thoughts of every man in uniform. First, he hopes to get back to the postwar world. Next, he is concerned for what opportunities that postwar-world-to-be will have for him. The topic is being currently debated in many a scuttlebutt and propwash session wherever servicemen — and women — are gathered. Those who are on military leave from their companies are particularly interested, for it is with old associates and familiar places that they will hope to take up their civilian careers again.

For private industry, such as the public utility industry, there arises a corresponding postwar problem of making a new set of plans for personnel training, so as to be ready—when Johnny comes marching home—to receive him gracefully and fit him into his old, or new, job in civilian life with the least complication. Definite plans along this line are necessary for the simple reason that Johnny—or G. I. Joe, to use the more popular reference —is not the same boy he was when he marched off to war. His attitude, his approach, his thinking have changed. They have been purposely changed, to a great extent, by military training obviously designed for an entirely different objective than serving a civilian public politely or selling things persuasively or other of the innumerable tasks of peacetime employment.

THE change in G. I. Joe will not be immediately visible. In the months following the war's end he will come drifting back singly and in groups. There will be the excitement of the return, the parades by home-town units, and the impromptu greetings to individuals as they return from posts at home and abroad, afloat and ashore. Hand shaking and back slapping will be

the order of the day as old associations are renewed. No doubt some statisticians will be called upon to figure out the man-hours involved in such celebrations during the months following the cessation of hostilities. During the animation of these days, and before the returned Joe has settled down to the routine of a job, there will be little outward evidence of changes within the man. But whether the imprint has been left by participation in actual battle or whether from no more glamorous chore than living in a rented room, third floor rear, in some crowded embarkation center, the changes will be there. His viewpoints may take a little time to develop, but the dormant seed can be expected to sprout in direct proportion to the amount of idle time he has on his hands and in his mind.

Some of the obvious factors in producing a changed attitude are already on the surface. Take personal finances, for example. Many young men, especially flyers, are now deriving more income from the service than they ever did from civilian life. Some of the net increase no doubt is being largely offset by the fact that many have or will, before the war is won, succumb to matrimony. Nevertheless, the *habit* of looking at those large figures on the pay check, established through the war years, will be a difficult one to break when the airman puts his B-17 down.

Next, take the problem of adjusting personal prestige, based entirely on military rank, to the dead level of civilian "citizenship." Many of the young men are holding commissions considerably above the relative civilian rank they will find themselves in on their return. Civilian life has a different standard of values as we all know. The same vigorous, alert response to duty which today is bringing many an aggressive youngster all sorts of shoulder-strap decorations, may not be worth a plugged nickel in the mundane marts of trade, unless supplemented by some special knowledge, technical training, education, or background, and so forth. A little thought will be required to readjust the ex-major to the idea of taking direction from an ex-captain or even from an ex-shavetail, for his boss may have been just that!

THERE is also the case of the older man who is now making less money in the service and in many cases holding less relative rank than that of his peacetime position. He will feel, after mustering out, that for him the economic clock stood still—or perhaps started to go counterclockwise during his term of service. This will strike him as a pressing reason for doubling his efforts to make up for lost ground. There are also those in whom military life has developed hidden skills and talents for leadership. Others are now "lost" in the military machine or developed into mere cogs, who, heretofore, have exercised supervisory responsibility in civilian employment.

All will have one thing in common—they will be glad to get home, lay aside their uniforms for the moths and veterans' parades, and then get back on the job. It is at this point in his career that postwar planning will begin to operate for, as expressed in the *Information Bulletin* of the Bureau of Naval Personnel for January, 1944, "obviously the veterans will return to a changed world. War will have changed them and the places they left."

FITTING FUTURE VETERANS INTO POSTWAR JOBS

If a change in attitude is to be expected among returning personnel the next question is, what bearing will it have on postwar plans? The answer is that it is only good business to make maximum use of an investment in training and experience. The percentage of a company's peacetime personnel now in the armed forces represents a sizable investment in these important intangibles. The majority of these people will hustle back to the employment office as soon as they are officially discharged. The obvious move, then, is to recover that investment and use it in the furtherance of postwar plans.

ANY measures that can be used to guide the attitude and the effort of these people into constructive channels will serve to hasten the day when the entire organization is properly geared and ready to perform successfully in the postwar era. Since it will not be possible for a concern to start at full speed on this program the day after an armistice is declared, but must wait some months before the bulk of its employees on leave have returned, it would seem desirable that all hands be kept *busy* as soon as they have been relocated in the company.

Returnees will welcome work and plenty of it. Work that directs their attention to the future and away from the proximity of their recent experiences. Work that will start them thinking constructively in their own and their companies' interest. What they definitely will not want to do is to sit around in either physical or mental idleness waiting for somebody to give the starting signal. Keeping busy during this period of readjustment will minimize a tendency to grow dissatisfied with inaction. Too well will they remember the long periods of monotony in the service when there was little to occupy the mind except the mundane scuttlebutt that served to pass the time. But the question arises as to what can be done during the period of demobilization and readjustment to help accomplish the desirable end of "keeping busy"?

The word "indoctrination" has become popular in the services. It means, literally, to learn a lot in a minimum of time. Any naval officer who went to Indoctrination School, or Army officer who came out of OCS will testify to the correctness of the definition. Reindoctrination, as applied to the immediate post armistice period, will mean a retraining, or refresher, program to occupy that period of waiting until the ship's company is all aboard and the order to up anchor can be given.

¶ "FOR *private industry, such as the public utility industry, there arises a corresponding postwar problem of making a new set of plans for personnel training, so as to be ready—when Johnny comes marching home—to receive him gracefully and fit him into his old, or new, job in civilian life with the least complication. Definite plans along this line are necessary for the simple reason that Johnny—or G. I. Joe, to use the more popular reference—is not the same boy he was when he marched off to war.*"

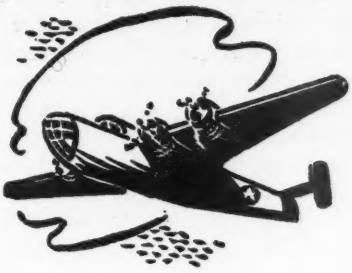
PART of the content of this reindoctrination program can be determined by finding out how much of his company training the employee has forgotten. How much of the organization's policies and procedures will he remember? As a test case consider how much of the excellent public contact routines developed by public service companies will need refreshing in the mind of the veteran whose thinking for the past several years has been in the terms of a service where there were no "customers" as such. The soldier lived in an atmsophere of "orders" and "directives."

The telephone technique as practiced in the service may be of some concern to utility managers if allowed to be used on an unsuspecting customer, especially if the customer happens to be an ex-serviceman or woman. The tone of voice favored by a top sergeant in communicating his wishes over the phone, while effective for the purpose intended, cannot be construed as a model for standard practice. When Mrs. Zilch calls up to report her lights out and to please send a repairman out immediately, she will be loath to accept as final that reply couched in such phraseology which, while perfectly clear and understandable, may leave something to be desired in its implication. She may even put on her bonnet and come down to the main office looking for "somebody in authority." She may even be moved to have the law on somebody who intimated that she could "bail out and forget to pull the rip cord."

Employees will be interested in changes that have occurred in the company organization during their absence. Which department handles *this,* and which handles *that*? In general much of the *know how* and the *know where* which always distinguished employees of a top-notch organization and enabled them to render little better service than was expected, will have grown rusty in their absence. Such knowledge will be old stuff to those on the job. To those who return, it will be indispensable. Refreshing the memory on these points may take an hour or so now and then but the positive effects should outweigh any negligible loss in man-hours with the attendant danger of allowing the employee to get his information through the uncertainties of the grapevine.

STILL another item which should be listed in the agenda for reindoctrination is the matter of economy. Economy was not the pressing order of the day in the services as it was in the employee's civilian organization. True, no soldier, sailor, or Marine ever deliberately became careless with property simply because it was labeled "U. S." But in the development of war operations, survival of life naturally took precedence over economy of property. If a man lost his gun on the beach or his helmet fell overboard he got a new one (along with a lecture from the supply sergeant). If it was necessary to abandon valuable equipment he did so, without a second thought. It is quite possible that many civilians who have wrestled with points and coupons will be more inured to the idea of economy than will the returning soldier or sailor. Here, then, is another topic tactfully and carefully fitted into the reindoctrination curricula.

Among the civilian techniques likely to be in the background of the veteran's



Less Income in Civilian Service

"MANY young men, especially flyers, are now deriving more income from the service than they ever did from civilian life. Some of the net increase no doubt is largely offset by the fact that many have or will, before the war is won, succumb to matrimony. Nevertheless, the HABIT *of looking at those large figures on the pay check, established through the war years, will be a difficult one to break when the airman puts his B-17 down."*

memory is that one entitled "How To Get Things Done." In the service an *order* got things done. No argument. Just, "you do this" and it gets done! Admittedly, the custom of giving orders has some advantages over the technique of persuasion. If a muddy field is to be scraped off and made into a landing strip in a couple of hours you tell somebody to clear it off. There is no waiting for a permit, no permission required to trim the trees, and you dump the dirt wherever convenient.

But in the return to civilian life the longer and more complicated technique of "persuasion" will be the rule in dealing with the public. The ex-serviceman may have to be taught the rudiments of the persuasive theory all over again in the interests of good public relations! A recent picture in a company magazine sent by a public utility to all its employees in uniform showed a prewar view of activity in one of its prewar stores. The floor was covered with rows of gleaming electric ranges, refrigerators, water heaters, ironers, floor lamps, and other appliances around which salesmen and customers were busily circulating. The caption read, "It Will Happen Here Again" and went on to state that the contemplated postwar program of that particular company would require a considerable expansion in the sales force that would readily absorb many of the company's employees on military leave.

No doubt some G. I. Joe sitting under a South Pacific palm tree read this item avidly and with bulging eyes as he visualized himself shedding his uniform and hastening back to greet

the customers who would be waiting in line for him. But if he works for an electric company that has built up standard procedures dealing with the retention of the customer's good will he may have to undergo a little schooling before he can find himself on a full production basis and at the same time conform to established policy.

Among those topics necessary to equip the home-coming employee with information useful in shedding his military habits for civilian procedures will be one in which the intangible values will far outweigh the visible knowledge to be presented. Such a topic is the story of how the company took its place in the war effort. How was the load maintained? What changes were made to property and equipment? How were operations safeguarded? What was the organization of the protective forces of civilian defense? How were the departments kept running on reduced personnel? What was the score on Red Cross, bond, paper, scrap, and all other forms of "drives"?

This again is an old story to those who remained to keep the ship afloat, but to those who return it will be immensely interesting. It would seem feasible that this feature be developed by the assistance of pictures and exhibits not only as a matter of pride in company organization but because in the very act of presenting this information there will be engendered a mutual feeling of respect between those two groups whose fusion in coöperative effort to further the company's interests will, as they say in the Navy, "make a good ship." This will be an effective means to dissipate any possible friction that may be tempted to develop while minds and tempers are still under the influence of the war's stimulus.

So much for the things that G. I. Joe will want to know in order to reindoctrinate himself to civilian employment. In addition to such psychological "retooling," so to speak, there are two things that those in uniform will need and will look for in postwar personnel programs. These are, an *objective* toward which the veteran can guide his efforts, and a *leadership* in which he can feel full confidence. We might now break these two down and have a look at their components.

He'll be looking for an objective because he will want to know, of course, whether he's hooked up with a business that really has a future and whether he stands a fair chance of getting his share of it. Specifically this takes in an "objective" for his company, his department, his division, and for himself. The word will be familiar. His military career will have been filled with objectives. He may not have always known where he was going but he knew that somebody in command did and that he was on his way.

When there was no objective in view the monotony became pretty deadly. So it can be if he returns to an objectiveless job. True, he would have *a* job. A routine one. Same thing every day. In the same way. Ought to be thankful just to have a job, even a routine one. The inevitable result would be to nourish a brooding dissatisfaction that would be detrimental to plans for postwar progress. Nor is it likely that veterans would be bashful in expressing themselves or in promoting concerted action for the redress of grievances whether real or imagined.

"But," says a critic, "there will be plenty of objectives; *anybody* ought to be able to see that!" The critic is probably right. But he forgets that the future veteran will return to business, whose progress has escaped his attention because of his absence. He will have to be *shown,* patiently and clearly and fundamentally—even repeatedly. What may be perfectly clear in the minds of postwar planners will be so much Greek to those who return, at least for awhile.

THE element of leadership, which was always a part of the employee's thinking, became an intimate part of his daily existence when he put on a uniform and continued up to the day of his discharge. On his return he will naturally make comparisons between the leadership he experienced in the service and that which he finds at home. He will be quick to correlate the objective with the leadership by which it will be attained. Some men will have experienced a leadership of a superb type — something that brought them safely through the hazards of battle. And there will be those whose military careers will have witnessed leadership of an inferior quality to that with which they were accustomed prior to the war.

The sudden transformation of the civilian into the soldier will, in some instances and in spite of the watchful eye of the military staffs, have caused the heads of little men to swell out of all proportion to their ability. In the exigencies of war some of these men have been unable to exercise leadership other than that provided through gradation of rank. In any event, comparisons will be made. Leadership will be called upon to solve some problems not previously in the book.

Many alert employees will have absorbed much from their wartime experience that may seem of value to them in a civilian organization. New methods of training and new techniques in many fields will no doubt produce ideas of ultimate value to the industrial or public utility concern. Tactful handling of these ideas will not only sift out those which will really be of value, but will also retain the enthusiasm and good intentions of those who sincerely make suggestions of the other sort.

THERE remains the problem of defining the limits of the period during which personnel shall be retrained for permanent service. This can be labeled the Critical Era for in it will occur the experiment of retrieving, as

¶ "RETURNEES *will welcome work and plenty of it. Work that directs their attention to the future and away from the proximity of their recent experiences. Work that will start them thinking constructively in their own and their companies' interest. What they definitely will not want to do is to sit around in either physical or mental idleness waiting for somebody to give the starting signal. Keeping busy during this period of readjustment will minimize a tendency to grow dissatisfied with inaction.*"

much as possible, the working efficiency that characterized the employee group before the outbreak of hostilities. It will roughly parallel the period of demobilization. How long that will last is anybody's guess at present writing. The length of enlistment in most cases has been for "the duration and six months." But personnel managers who must lay their plans according to conditions as they find them may logically assume that not all of their working force will have returned by the end of the six months following the "duration." Purely as a base from which to speculate, it might be assumed that the peak load of demobilization will occur after the third month and continue past the sixth. But the time up to eighteen months can be marked as the Critical Period in that it will determine the attitudes as well as the aptitudes of returning service people for the work of the postwar era.

Some sort of records might well be kept of the "work attitude" of the reëmployed service man during this Critical Era. He will start out with great enthusiasm. This is likely to increase the first two or three months. After that it is likely to taper off or even drop rapidly as the novelty of civilian experience wears off and the realities of making a living in a civilian world become more apparent. During this period efforts should be made to keep the line of "work attitude" from sagging into indifference, defeatism, or dissatisfaction. After six months, however, it should be pretty apparent that the returning veteran has "caught on" or, as is likely to happen occasionally, he is just not going to catch on and should take steps to shift into some other field where he is more temperamentally suited and personally satisfied.

RECENT eye-catching magazine advertisements have featured the idea that the boys want nothing more on their return than to find home as they left it. Just leave everything the way it was. Put the dog on the fireplace, hang the picture askew on the wall of his room, scatter the tools over the basement work bench just as he left them. This makes a thoughtful scene and is quite likely to stir up nostalgia whenever it is conjured up. But the trouble with this picture, beautiful though it may be, lies in the false assumption that Americans returning from what to many will be the epic experience of their lifetime, will be supremely content to sit down among the stage trimmings of the past and there remain in peaceful and bucolic meditation. This sort of thinking doesn't make sense to men who in standing the long night watches afloat, or in patroling some lonely post, will have thought about things back home in clearer perspective than they ever did before. Or who in many a session with their shipmates will have exchanged ideas and picked up new ones concerning their hopes and ambitions when they again return to civilian life. Should he come back to a land of "things as they were" he will soon begin to stir uneasily in the peaceful scene. The old way will have been washed out by the war. He will be looking for the new.

In recognizing the probability of a changed attitude, with attendant possibilities for dissatisfaction, the antidote lies in providing sources of interest by which the ex-serviceman may be kept *busy* until he has become adjusted to his peacetime status.

Tu Quoque, Say the Tramways

A new twist to public ownership talk in connection with the Montreal traffic problem.

By A. E. PERKS

A NEW angle has suddenly been given in Montreal to the age-old problem of who should own public utilities and for whose benefit they should be operated.

R. N. Watt, president of the Montreal Tramways Company, threw the bomb, but he was not responsible for its manufacture. A number of people, including DeLeuw, Cather & Company, Chicago transit planning experts, collaborated in pouring the high explosive into the bomb, fitting the detonator, and screwing down the cap.

But it was R. N. Watt who, on Friday, May 19, 1944, got up at a luncheon meeting of the Greater Montreal Economic Council, a body created to study what should be done by and in Montreal after the war to keep people working and the wheels of progress turning, and tossed into their midst this proposition:

Since public utilities are expected to be operated exclusively for the benefit of the public, let the said public pay for them.

And, then to reinforce that first idea:

Since private capital is neither compensated when it loses nor allowed to pick up the kitty when it wins, private capital will be darned if it gambles any of its money building an underground railway for Montreal.

Build it yourself, Oh, most Excellent Public.

He did not say it quite so brutally as that. Mr. Watt is renowned for his gentlemanly approach to the public. But however politely the retort courteous may have been couched, that was what it said when the nice words were blue-penciled out.

So, with a traffic situation unrivaled anywhere in North America for complication, the problem of what to do about it becomes still more complicated by the introduction of an entirely new political angle, and everybody who hasn't an axe of his own to grind in the matter is watching with an almost scientific interest what this new turn will do to it.

MONTREAL'S traffic suffers not only from the usual twists and turns that antiquity and the activities of land speculators in past ages have given it, along the lines of narrow streets where they ought to be widest, blind alleys where through traffic is urgently needed, bottlenecks that it costs millions to expropriate, but a few more that God, Jacques Cartier, and the early pioneers have specially donated to the French Canadian metropolis.

Manhattan would resemble Montreal a good deal if there were two mountains right in the middle of Manhattan island, and New York had been built all around the mountains, with Central Park on the two summits.

Cartier, first white man to visit Montreal, left an historical tradition about landing on the south shore of the island and finding an Indian village on the south or southeast slope of the mountain; and later pioneers carried on the idea of the south shore and the south slope, so that everybody since then has strung along with it, and what corresponds to East Side and West Side in New York are called North and South in Montreal and the streets that actually run almost due North and South, are officially marked East and West. Apart from a little confusion that doesn't do much harm, but following the lead of the early pioneers, the oldest, most congested, busiest part of the city has grown up in the mile-wide strip between the docks and the rising slopes of the mountains. Running tramways up one side of a mountain and down the other is not considered good technique so the streetcar traffic pretty well all has to pass sooner or later through that gap between mountain and river edge.

As far back as 1920, officers of the Tramways Company foresaw that sooner or later, if the traffic situation in Montreal was to be rationalized, the bulk of the streetcar traffic through the "central" portion of the city (which is really the east side, since the geographical center is the summit of one of the mountains) must be taken underground. A score of years ago the then manager of the company, the late Colonel Hutchison, put forward a project, to start with an elevated line down near the river, running horizontally until the street level came up to meet it, and then continuing underground for the rest of the journey. John Public arose as one man in indignation. Enough had been heard of the horrors of elevated lines in New York. None for Montreal. A thousand times No. So the idea was dropped.

A dozen years ago, the company came back with suggestions for two subways, one running north-south according to the street-marking convention, which means east-west according to the compass; the other running geographically east-west and conventionally north-south; the whole to cost $60,000,000. But they figured it could not be made to pay returns, with less than a million population to use it and a maximum of 7 cents streetcar fare. No one, either in city council or legislature, could be found to take the risk of sponsoring a fare that would make the investment worth while. And then there was the depression, anyhow. So it went on the shelf.

Now, some things have changed. Public works have to be done, just as soon as we finish making munitions. We have to get busy seeing that

everybody stays working. Everyone that has a business or an industry has to see that he keeps it going, after the war, because everybody has to stay at work and go on being prosperous.

And the congestion of traffic is becoming tighter and denser month by month. When the ban on gasoline and tires is lifted and the automobile makers begin selling the millions of cars they will have to sell to keep their plants running and their personnel working, no one dares try to picture the condition of traffic on some of Montreal's busier 36-foot streets.

The Tramways Company has the answer.

Take the traffic underground. Build underground rapid transit lines to be operated in close collaboration with the streetcars and busses.

But the government of Quebec Province has just adopted a law whereby the plant, buildings, and distributing facilities of Montreal Light, Heat & Power Consolidated are taken over by expropriation and a special commission will be appointed to decide how much the government shall pay the company for the dispossession.

THERE are murmurings in city council and in legislature that the tramway services should also be taken over either by the government or the municipality. Public ownership is in the air.

So, says the head of the Tramways Company: "It will be impossible to obtain private capital to build subways. If they are to be constructed it will be necessary to obtain public funds be they municipal, provincial, or Federal. It might be decided that some of the cost should be paid by adjacent property owners. Records show that wherever subways have been built, property values have increased. It might be considered equitable that some portion of this increased value should be applied against the cost of the subway rather than retained by the property owner."

Railroads and Aviation

"THE railroads are in the business of selling transportation. To separate that business into airtight compartments, assigning each compartment to a different organization, is to overlook the fact that bus, rail, and air transportation will in future be so closely interrelated that artificial barriers must be bound to affect adversely the interests of both shipper and traveler. . . . The present administrators of American railroads should not have to suffer from a bill of attainder because of the sins of long ago. By their activities these past twenty years they have literally pulled themselves up by their bootstraps to a position where they are today among our most alert, efficient, and effective private enterprises. Fortunately for this country of ours, the railroads were ready when war came; they were ready because a policy of frugal, honest, and farsighted administration had cut down costs and increased operating efficiency.

"Nothing so far developed in the way of transportation can take the place of our railroads in the movement of masses of material and men. They have earned the right to be treated not as pariahs, untrustworthy and venal, but as wide-awake merchandisers of transportation. To bar them from participation in aerial transportation is about as reasonable as to tell a clothing merchant that he can sell coats but no suits."

—EDITORIAL STATEMENT,
The Hartford (Connecticut) Courant.

Wire and Wireless Communication

THE National Association of Broadcasters held its executive war conference in Chicago August 29th. Approximately a thousand broadcaster delegates assembled at the opening meeting presided over by President J. Harold Ryan, and listened to congratulatory telegrams from both President Roosevelt and the Republican presidential candidate, Governor Dewey, of New York. The latter's message informed the convention that he stood solidly behind the "free radio" plank in the Republican platform and lashed out against unnecessary governmental domination.

The broadcasters assembled in an optimistic mood, encouraged by the recent action of the FCC in calling for hearings on September 28th for all users of radio wave lengths to discuss new allocations and the entire commercial radio spectrum. This action followed the meetings held in Washington last month by technical representatives of radio, telephone, and other communication carriers to discuss international radio allocations under the auspices of the State Department and sponsored by the Interdepartment Radio Advisory Committee.

While there had been some question about holding the 1944 meeting, in view of the urgent request of the Office of Defense Transportation to curtail business gatherings to ease the strain on the nation's overburdened railway transportation system, the critical problems facing the broadcasting industry were believed to justify holding the meeting. Evidently leading government officials felt the same way about it. The program featured a number of government officials, including FCC Chairman James Lawrence Fly and Assistant Secretary of War Robert A. Lovett.

IN addition to the usual discussion of radio operating problems, the forthcoming election campaign had inspired a number of questions in the minds of the radio men who know that the broadcasting business is going to be on a hot spot until after the next election, regardless of how it turns out. For this reason, it was believed likely that the convention would reappraise, but generally reaffirm, its voluntary code of ethics, which had been attacked by CIO unions.

Another lively topic of discussion, also involving a labor union angle, was likely to settle around the activity of James C. Petrillo, president of the American Federation of Musicians (AFL) for seeking to influence a ban on the use of recordings by union musicians on radio programs, unless various conditions of union employment and demands are met.

The concluding session on Thursday, August 31st, was scheduled to go into the problem of frequency modulation (FM) broadcasting and was to feature an address by Commander T. A. M. Craven, former member of the FCC.

THE National War Labor Board on August 25th directed a standard voluntary maintenance of membership clause, with a 15-day escape period, in a dispute involving the American Telephone and Telegraph Company (Long Lines Department) and 17,000 employees represented by the Federation of Long Lines Telephone Workers, an independent union affiliated with the National Federation of Telephone Workers. Industry members dissented.

The company said it was opposed to maintenance of membership on principle and because "there is no necessity for such a clause." The union contended it was entitled to maintenance of membership because it is a responsible labor organization, and cited a long list of Bell system and Western Electric cases in which the board has ordered the union security provision.

The present contract provision for voluntary check-off of union dues was not at issue.

The board unanimously directed that the question of wages may be reopened at any time after six months from the effective date of the agreement. During the first six months wage questions may be reopened only if the union contends that rates in any labor market area for any occupation contained in the agreement are below the approvable rates set by the WLB subsequent to July 2, 1943.

The union requested the reopening clause, it said, because it has many groups throughout the country whose wage inequities are not known by the national office until they are informed by local officials. The company agreed to the reopening clause on condition that it be limited to approvable rates set by the WLB after July 2, 1943, the date on which the board issued a directive order on the wage issues of this case.

Seniority and union activity issues were referred back to the parties for further negotiation.

The Long Lines Department of the American Telephone and Telegraph Company is an operating unit of the Bell system. It has four operating departments—plant, traffic, commercial, and engineering—and several staff departments.

* * * *

GERMANY'S surrender will flash the green light on resumption of production of civilian radios, WPB officials informed members of the radio industry advisory committee in Washington last month. For the remainder of this year, however, they added, the radio-radar production program must be maintained at its present pace, which is about 16.4 per cent above the July rate.

Various governmental controls will in all probability be removed as soon as the German capitulation is an accomplished fact, former Vice Chairman C. E. Wilson of WPB told the group prior to his recent resignation. They should be relaxed as quickly as possible, he added, and the over-all war production program will be cut, it is anticipated, by about 40 per cent.

Cutbacks in prospect after the collapse of the Germans may be extensive enough, Mr. Wilson declared, to assure sufficient raw materials for civilian manufacture in this field to proceed entirely without quota restrictions, especially in view of the fact that the quantities of copper, steel, and similar critical materials needed for the purpose are relatively unimportant.

Army and Navy officials concurred in Mr. Wilson's assertion that increased production must be maintained through December of this year.

Referring to the "spot" authorization order of August 15th, WPB executives emphasized that radios were excluded from the civilian output program, as were automobiles, refrigerators, and washing machines.

Future OPA price ceilings in this field also were discussed at the meeting and announcement was made that OPA advisory committees of sets and parts manufacturers would be named and a schedule of gatherings set to work out specific civilian price ranges would be completed for mid-September.

One of the results of the session was the suggestion that more adequate infor-

mation be provided to manufacturers regarding program reduction in cutback procedures on V-day. The Army and Navy are coöperating in formation of such information with the WPB radio and radar staff.

* * * *

A CONFUSED collective bargaining situation which has existed since the Western Union and Postal Telegraph companies were merged last fall will be untangled soon when a National Labor Relations Board election of more than 60,000 employees will be held. Competing for bargaining rights in seven regional divisions will be the AFL Commercial Telegraphers Union and the CIO American Communications Association.

The former union, and other AFL units, represented 38,000 of Western Union's 54,000 employees last year. ACA held a union shop contract for 14,000 Postal Telegraph workers, and also represented 7,500 Western Union employees in New York, Detroit, Duluth, and Salt Lake City.

When the firms were merged the original government bill called for a national election, but CIO pressure caused a revision of plans, for the total AFL membership among unionized employees led by a 17,000 margin. Instead of one unit, as the AFL advocated, the CIO wanted 120 units, so that it could gain bargaining rights in sections where its strength is greatest.

The case was submitted to the National Labor Relations Board, and eventually a referee, who directed that the system be divided into seven units. Metropolitan New York is one, and the other six cover separate regions of the country. Pittsburgh, a strong AFL center, is in the eastern region, which includes Pennsylvania and 12 other states, largely New England and the District of Columbia.

* * * *

THE Federal Communications Commission has rejected a petition by the United Automobile Workers to have officials of the National Association of Manufacturers testify in answer to union charges that big business is using economic power to influence radio audiences.

Richard T. Frankensteen, vice president of the CIO union, had requested the appearance of three NAM officials at a hearing on the union's complaint against radio station WHKC, Columbus, Ohio. The union charged the station censored labor programs and thus interfered with free discussion.

Acting Chairman Ray C. Wakefield of the FCC gave no specific reason for rejecting the UAW petition, but attorneys said it was in effect a ruling that the petition was not related to the Columbus case.

A spokesman for the Columbus local of the CIO local testified that he agreed to editing of any controversial matter in the union's programs over station WHKC. The witness, Richard E. Evans, public relations director of the local, said union members approved a broadcast contract with the Columbus station after negotiations with two other stations. He said WHKC offered wider coverage.

He testified that the programs were designed to promote the interests of organized labor in the community. He said he told the management that the broadcasts would be educational, with some speeches of union leaders. An agreement with Station Manager Carl M. Everson, the witness said, stipulated that scripts were to be submitted for examination several days in advance of broadcasts and that controversial matter was to be eliminated.

UAW demanded revocation of the station's license on the ground that the management censored a speech by Mr. Frankensteen.

Everson, who described the case as a test involving the whole radio industry, testified there was no basis for the complaint and that the station had been friendly and coöperative toward labor.

Philip G. Loucks, representing the station, told the commission it would demonstrate that the UAW charges are "without substantial foundation in fact and

that WHKC, instead of throttling labor, is liberal in its policies and is one of the few stations in the country to sell time to labor unions."

* * * *

THE disposal of surplus property is the chief congressional topic at present. Congress still has that phase of demobilization before it.

But quite frequently it is the enemy who can be blamed for causing surpluses of war materials, as indicated by the following story—referring to only one small item—related last month by Howard Bruce, Baltimore industrialist and banker, now special assistant to the director of plans and operations of the War Department.

Figuring that the German army in France would carry out its usual demolition and destruction, the War Department arranged to send 150,000 telephone poles to replace those which probably would be destroyed. In fact, some 50,000 poles were landed in Normandy shortly after D-day. But when the Nazi retreat began, they got out of the Normandy peninsula so fast that up to a very recent date only some 500 poles have had to be replaced.

Mr. Bruce told of this incident shortly after his appearance before the Senate War Investigating Committee delving into surpluses, along with a number of Army officers. The Baltimorean told the group (formerly known as the Truman committee) that although the War Department was continually tightening its controls to prevent surpluses, the primary objective was still to produce sufficient material to meet the war need.

* * * *

REDUCED rates on overseas telephone calls between many United States points and Costa Rica, Guatemala, Honduras, Nicaragua, Panama, and Surinam and between *all* U. S. points and Curacao, Dutch West Indies, were scheduled to become effective September 1st, as the result of amended tariffs filed by the American Telephone and Telegraph Company, the FCC announced last month.

Reductions in program transmission service charges would become effective between the United States and all of the above countries except Panama and Surinam, on the same date.

Charges on a 3-minute, weekday call from Washington, D. C., to Costa Rica, Guatemala, Honduras, Nicaragua, or Panama, for example, would be reduced from $9 to $7.50; rates on a similar call from California or any of the Pacific coast states would be cut from $13.50 to $9. Proportionate reductions were made in Sunday rates.

Similar reductions were made for service from all other states except Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut, New Jersey, New York, and Pennsylvania. From these states the $9 3-minute weekday rate and the $6 Sunday rate to the above overseas points remain unchanged.

* * * *

VOLUNTARY cash contributions totaling $2,500 have been received at Mitchel Field hospital to pay for telephone calls home by wounded soldiers flown there from Europe, and scores of offers of regular contributions have been received from welfare agencies, service groups, American Legion posts, employee organizations, and individuals, the Army said recently.

"At the present time, all proposed contributors are being asked to address their donations to Custodian, Post Hospital Fund, Mitchel Field, Long Island," the announcement said. Army authorities are now setting up the machinery for administering the fund and distributing the telephone time available.

Telephone company officials said the average long-distance call from Mitchel Field, station-to-station, costs $2. Hence, the contributions already received would provide one 3-minute call for each wounded soldier who arrived at the hospital during the latter part of August and the early part of September. They arrive at the rate of 1,000 a month.

Financial News and Comment

By OWEN ELY

United Light & Power

(Series of holding company reviews.)

On April 5, 1943, the SEC approved a dissolution plan of United Light & Power whereby 94.52 per cent of the common stock of United Light & Railways (the sole remaining asset) was to be distributed to preferred stockholders and 5.48 per cent to the common stockholders. On August 4th of that year a U. S. District Court entered a decree approving the plan and making the exchange mandatory. However, Otis & Co., who originally headed the group offering the preferred stock and who are currently the holder of an odd lot, appealed to the U. S. Circuit Court of Appeals, and—when this decision was adverse—to the U. S. Supreme Court. The question involves the old issue of "absolute priorities"—a question recently injected into the field of railroad reorganization by the pending Hobbs Bill.

Recently the company asked the SEC to permit distributing 94.52 per cent of the new Railways common stock, leaving the 5.48 per cent in escrow for allotment to either the preferred or the common, as the Supreme Court might decide. But this proposal has raised a technical problem. Bear, Stearns & Co., who have been making a market for the new common stock on a "when-issued" basis, have urged the SEC not to permit any immediate distribution, since this would make it difficult to adjust "when-issued" transactions. The new common stock has been traded in arbitrage transactions against both preferred and common stocks of United Light & Power Company. Hence, such transactions could not be properly cleared until the Supreme Court has passed on the allocation of the new common stock. The SEC has not yet indicated its opinion in the matter.

United Light & Power preferred stock has recently been selling around 60, which is equivalent to about 12 for the new common. (Due to the usual arbitrage, the when-issued price for the new stock is 12¾-13.) Railways' share of system earnings for 1943 was $7,465,899 compared with $9,668,499 in the previous year—the reduction being due principally to higher Federal taxes. Based on the plan, it is proposed to change the present outstanding 708,520 shares of $35 par value common into 3,173,838 shares of new common with $7 par value. Based on the new numbers share earnings in recent years would have been as follows:

	Consolidated	*Parent*
1943	$1.49	$.69
1942	2.16	.59
1941	1.13	.46
1940	1.57	.80
1939	1.42	.84
1938	1.06	.93
1937	1.61	.38

The present indicated price of 12 for the new common is equivalent to 8 times the consolidated share earnings and, assuming that all parent company earnings for common were paid out, the yield basis would be about 5¾ per cent. But it is quite possible that the parent company could "take down" a larger proportion of earnings and dividends than it did last year, in which case a larger dividend could be paid. Continental Gas & Electric has not paid out any common dividends in the past two years and payments in 1939-41 could have been substantially larger. Assuming that the full available balance had been passed along

to Railways in 1943 by the subholding companies, Continental Gas & Electric and American Light & Traction, Railways could have reported parent company earnings of $1.38 a share. The remaining 11 cents represented surplus retained by Iowa-Illinois Gas & Electric Company (an operating company controlled directly by Railways).

American Light & Traction Company plans to dissolve and has made some progress in that direction, having disposed of its southern property, San Antonio Public Service Company, and some smaller properties. The company has in its own treasury $8,367,730 net current assets (principally in cash), and retention of these idle funds in the past two years has reduced system earnings. Dissolution plans have doubtless been delayed by the rate and tax troubles of the largest subsidiary, Michigan Consolidated Gas, which may not be cleared up for some time. The company also has a big investment in Detroit Edison. The city of Detroit has been attempting to reduce utility rates sharply, on the theory that the reduction can be largely recouped through excess profits tax payments, and the supreme court of the state of Michigan has upheld this proposal. Since the company's Michigan and Wisconsin gas properties would not fit in geographically with the electric-gas properties of Continental Gas & Electric, it appears likely that American Light & Traction will eventually sell its stock holdings. (It might, however, decide to distribute and leave the question of disposal to United Light & Railways, which would take over 54.69 per cent of its holdings.)

Eventually Continental Gas & Electric may have to dispose of Columbus & Southern Ohio Electric and La Porte Gas & Electric Company of Indiana. The remaining properties in Illinois, Iowa, Missouri, and Kansas can perhaps be formed into a single integrated system. Continental has been doing some "swapping" of properties, presumably with the intention of developing an integrated system; in 1942, it disposed of properties with revenues of $1,870,539 and in 1942-3 it purchased properties with revenues of $3,786,953; in January, 1944, another purchase was made. The SEC integration order dated August 5, 1941, has been partially complied with and apparently the SEC is satisfied with the progress to date, although the question of selling the important Ohio subsidiary has not yet been settled.

Rate Cut Based on Income from Depreciation Reserves

THE Missouri Public Service Commission is reported to have ordered every utility in the state to credit income from the investment of depreciation reserves against the depreciation fund itself, and to reduce rates as a result of the reduced charge against operating costs. Without further details, it is difficult to follow the commission's reasoning in the matter, but this is apparently as follows: Earnings on invested depreciation funds (practically all utilities make a practice of reinvesting these funds in the property) average 5½ per cent on the investment. Hence, the annual charge for depreciation accruals can be reduced by that amount, which in turn increases net earnings by a corresponding figure. Hence, the rate cut is imposed to reduce net income to the previous level.

Assuming this analysis to be correct, it might be of interest to apply it to all the electric utilities to determine the statistical result. In 1942 (latest available figures) all class A and B utilities had a depreciation reserve of $2,306,144,561 on which 5½ per cent would be about $126,830,000. This is equivalent to about 4½ per cent of revenues, but it is also equal to about 45 per cent of the amount paid out in common dividends. Of course, with the present Federal tax umbrella, the penalty would be greatly reduced, but it is nevertheless a serious matter for stockholders.

This appears to be a practical application of the new theory that the depreciation reserve belongs to the public rather than to security holders. (See "Income Return from Depreciation Re-

serves," page 237, August 17th FORTNIGHTLY.) The whole question of depreciation appears to be more muddled than ever, and some clear-cut thinking is required. The commission's order is said to be "an adoption of the prudent investment theory in rate making, which is in accordance with latest rulings of the U. S. Supreme Court." But it appears dubious that the Supreme Court had any such objective in mind in the Hope Natural Gas decision, which is presumably the one referred to.

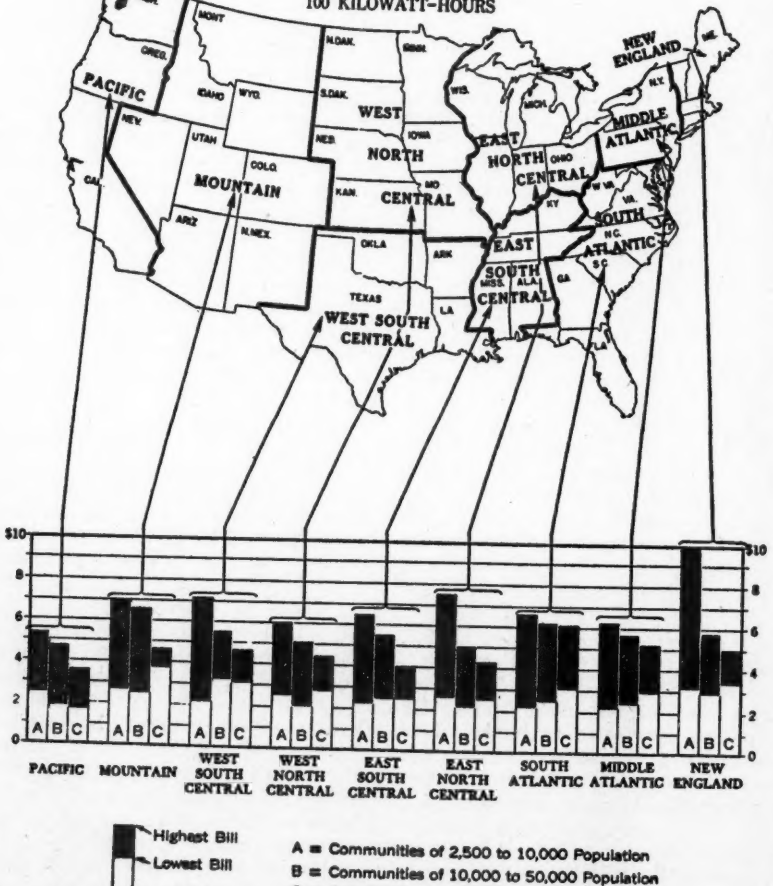
The court declared in the latter case

HIGHEST AND LOWEST BILLS

BY GEOGRAPHIC DIVISIONS

JANUARY 1, 1944

100 KILOWATT-HOURS



From Federal Power Commission

that the commissions should regulate the utilities in such a manner as to safeguard investors, including common stockholders, and encourage investment of equity money. But on the theory applied by the Missouri commission, stockholders (and even bondholders) may wind up "behind the eight ball." If they are not allowed to earn any return from the reinvested depreciation reserve, this means that the reserve does not belong to them. Moreover, if retroactive straight-line depreciation goes into effect—the public service commission of New York has been trying to apply it to the Niagara Hudson Power system—this means that an additional huge amount will be taken out of stockholders' equity, along with the cuts now being made due to aboriginal cost adjustments. With the various theories all in operation, return on net property account will be reduced three ways—first, due to the reduction of gross plant account to aboriginal cost; second, by greatly increasing the depreciation reserve; and, third, by cutting depreciation charges through the credit of 5½ per cent on the reserve.

If such a 3-way "squeeze" against stockholders were uniformly enforced, and rates adjusted accordingly, would there be much of anything left in profits? It is fortunate that these three new theories have thus far been applied only piecemeal, not uniformly on a national basis—otherwise the utilities might as well give up the fight and sell out to public ownership wherever possible. But the attempt to apply these new-fangled theories will be subject to court review.

Depreciation has always been considered a safeguard against wasting assets, and an insurance that investors' interests will be protected. It has not generally been treated as a transfer of ownership from investors to the public. Hereafter the utilities should apply depreciation funds to the retirement of bonded debt and should so indicate in their accounts. Additions to the property should be paid for out of fresh capital, rather than out of depreciation funds. This could probably be done by greater use of sinking funds and other changes in the accounting setup. It might also be worthwhile to reinvest part of the reserve (earmarked) in marketable securities. Perhaps by these methods the depreciation reserves could be restored to their original purpose of protecting the investor, instead of being diverted to the so-called public interest, the residential consumers (who are incidentally voters).

Depreciation charges are apparently too large judging from the continued rapid growth of the reserves as compared with gross property account. Total reserves for A and B utilities increased $811,000,000, or 54 per cent, during the period 1937-42, while the utility plant increased less than $1,000,000 or about 7 per cent (the small percentage being partly due to write-offs). Yet the utilities have been encouraged by the commissions to increase their depreciation charges, presumably on the theory that reserves were too small and should be built up out of earnings rather than through transfers of surplus. But to cut down these charges by crediting 5½ per cent on the reserve merely introduces complexities and disarranges the theory of reserve accounting.

Electric-gas Operating Company Stocks

In previous issues we have listed the natural gas and manufactured gas stocks, and the electric-gas holding company stocks. The table on page 366 lists practically all the electric-gas operating company stocks for which market quotations are available. Some of these issues are inactive minority stocks (such as Louisville Gas & Electric (Kentucky) and Wisconsin Electric Power) which may affect their market prices.

The list is arranged in the order of price-earnings ratios, which in a general way reflect quality. The first seven stocks in the list are, with one exception, New England issues; the high price-earnings ratios doubtless reflect the traditional New England broad common stock base, as well as the favoritism for their own

issues shown by investors in this section.

The price-earnings ratios of 14-16 include the large group of "average" electric utility companies. Consolidated Edison falls just below this group in our table, but if parent company instead of consolidated earnings had been used, the ratio would be over 15. The remaining issues include principally the smaller and less seasoned issues.

Utility yields are much more uniform than those on industrial stocks. The range in the table below is from 4.4 per cent to 8.5 per cent. Puget Sound Power & Light, which offers the highest yield, is probably not yet fully seasoned and investors may be awaiting the results of the November vote in the state of Washington on utility district combinations to purchase private utility properties.

ELECTRIC-GAS OPERATING COMPANY STOCKS

	Share Earnings		*Price*	*Price-Earn.*	*Dividend*	*Yield*
	12 Mos.	*Amount*	*About*	*Ratio*	*Rate*	*About*
Hartford Elec. Light	Dec.	$2.50	53	21	$2.75	5.2%
United Illuminating	Dec.	2.09	43	21	2.00	4.7
Conn. Power	Dec.	2.29	40	18	2.50	6.2
Lynn Gas & Elec.	Dec.	4.58	82	18	5.00	6.1
West Penn Power	June	1.20	21	18	1.10	5.3
Boston Edison	June	2.11	36	17	2.00	5.6
Conn. L. & P.	June	2.60	45	17	2.20	4.9
Commonwealth Edison	June	1.78	28	16	1.40	5.0
Cleve. Elec. Illuminating	June	2.12	34	16	2.00	5.9
Phila. Electric	June	1.35	20	15	1.20	6.0
So. California Edison	June	1.59	24	15	1.50	6.3
Detroit Edison	June	1.31**	20	15	1.20	6.0
Duke Power	Dec.	5.09	77	15	4.00	5.2
Cons. Gas of Baltimore	June	4.58	69	15	3.60	5.2
Wash. Rwy. & Elec. units	Dec.	1.02	15	15	1.00	6.7
Bangor Hydro-Electric	Dec.	.95	14	15	*	*
Fitchburg Gas & Elec.	Dec.	2.53	39	15	2.50	6.4
San Diego G. & E.	June	.94	14	15	.80	5.7
Delaware P. & L.	June	1.07	16	15	.80	5.0
Pacific G. & E.	June	2.37	33	14	2.00	6.1
Idaho Power	June	2.14	29	14	1.60	5.5
Houston L. & P.	July	4.95	68	14	3.60	5.3
Rockland L. & P.	Dec.	.59	8	14	.50	6.3
Wisconsin Elec. Power	June	.95	13	14	.58	4.5
Western Mass. Cos.	Dec.	1.84	25	14	1.60	6.4
Penn. Water & Power	Dec.	4.67	64	14	4.00	6.2
Cons. Edison	June	1.92	25	13	1.60	6.4
Sierra Pacific Power	May	1.63	21	13	1.25	6.0
Tampa Electric	June	1.99	26	13	1.60	6.2
Louisville G. & E. (Ky.) "A"	June	1.85	22	12	1.63	7.4
Central Hudson G. & E.	June	.65	8	12	.48	6.0
Central Vermont P. S.	Aug. '43	1.56	17	11	1.08	6.4
Pub. Serv. of Indiana	June	1.94	19	10	1.00	5.2
Pub. Serv. of Colorado	Aug. '43	2.68	27	10	1.65	6.1
Indianapolis P. & L.	June	1.97	19	10	1.20	6.3
Northern Indiana P. S.	July	.95	9	10	...	..
Michigan P. S.	Dec.	1.66	14	9	1.00	7.2
Central Illinois E. & G.	June	2.13	19	9	1.30	6.9
Montana-Dakota Utilities	June	.94	8	9	40	5.0
Mountain States Power	May	2.68	22	8	1.50	6.8
Black Hills P. & L.	July	2.02	16	8	1.08	6.8
Puget Sound P. & L.	June	2.16	14	7	1.20	8.5
Missouri P. S.	Mar.	1.52	11	7	.50	4.6
Southwestern P. S.	June	2.55	17	7	.75	4.4
Calif. Elec. Power	June	1.19	7	6	.40	5.7

* Indefinite.

** Does not make allowance for rate cut and/or special tax (about 30 cents estimated).

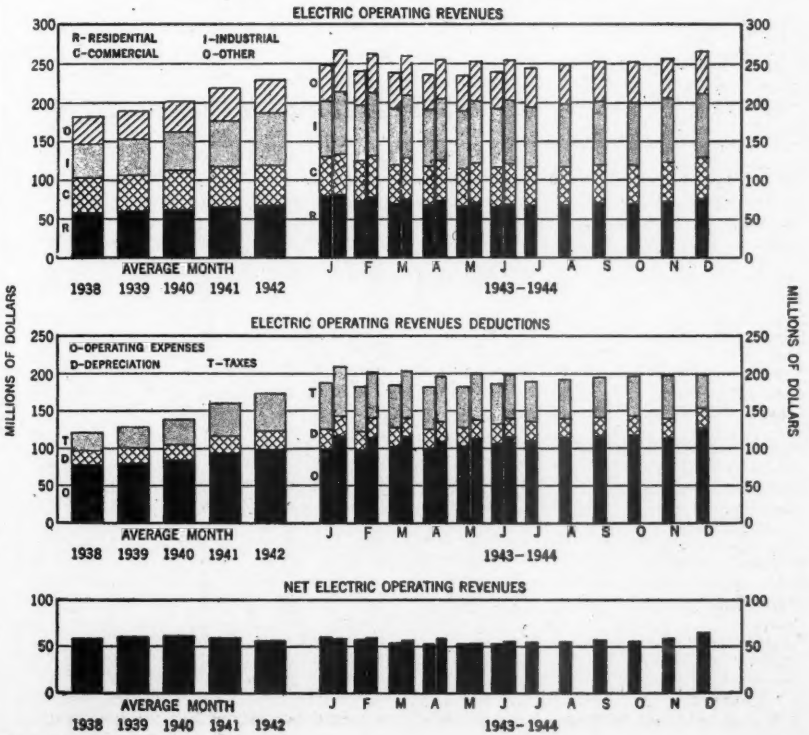
CLASS A AND CLASS B PRIVATELY OWNED ELECTRIC UTILITIES
IN THE UNITED STATES

JUNE 1944

PERCENTAGE CHANGE IN REVENUES RECEIVED FROM SALES OF ENERGY TO ULTIMATE CONSUMERS BY GEOGRAPHIC DIVISIONS

DIVISION	CURRENT MONTH OVER SAME MONTH LAST YEAR				12 MONTHS ENDING CURRENT MONTH OVER 12 MONTHS ENDING SAME MONTH LAST YEAR			
	RES. REVENUES	COM. REVENUES	IND. REVENUES	TOTAL REV. FROM ULT. CON.	RES. REVENUES	COM. REVENUES	IND. REVENUES	TOTAL REV. FROM ULT. CON.
UNITED STATES	3.8	6.0	5.3	5.1	5.9	3.4	12.1	7.9
New England	4.6	6.2	1.9	4.0	5.1	4.2	6.9	6.1
Middle Atlantic	0.5	7.1	5.3	5.2	3.6	2.6	10.3	6.8
East North Central	1.1	3.9	9.0	5.5	5.9	1.2	19.5	9.9
West North Central	4.2	5.6	3.9	4.5	5.6	4.0	7.0	5.0
South Atlantic	6.6	8.8	0.3	4.9	6.1	4.6	7.5	7.1
East South Central	4.2	5.2	8.1	6.6	5.5	0.8	11.9	8.9
West South Central	5.1	8.5	11.2	8.8	8.5	4.4	15.8	11.9
Mountain	4.3	1.9	(8.6)	(0.9)	5.6	3.5	6.2	5.1
Pacific	5.8	11.0	11.1	12.7	8.8	4.8	13.9	10.1

ELECTRIC OPERATING REVENUES, REVENUE DEDUCTIONS, AND NET REVENUES · UNITED STATES



Federal Power Commission

What Others Think

Disposition of Surplus War Property

With the sensational developments in the European theater of war, more and more thought is being given in Washington to so-called "reconversion" problems, including demobilization, termination of contracts, and disposition of surplus war goods. In the last-named category, much remains to be done by way of carrying out or modifying (if that is what the administration and Congress decide to do) the outline furnished in the Baruch-Hancock report on postwar policy.

Any program for the distribution of surplus war goods is immediately complicated by a considerable body of law and precedent on the subject which has been built up since World War I and before. One of the difficult tasks in administering any policy of surplus goods distribution will be to reconcile or clarify legal procedures in the light of this considerable background of case law and statutory law, including more recent as well as pending measures dealing with the subject.

A comprehensive restatement of this legal background, brought pretty well up to date, is contained in a timely article appearing in the June, 1944, issue of the *Temple University Law Quarterly* by Lieutenant Colonel J. Harry La Brum of the U. S. Army Signal Corps. Colonel La Brum's 78-page article covers the field from the lawyer's viewpoint since before the experiences of World War I, but an estimated surplus of four to seven billion dollars, accounting for approximately 22 per cent of the nation's total expenditures for that war, had to be disposed of as surplus.

It took six years to liquidate most of that surplus and the approximate percentage of recovery was about 35 per cent. This was an average figure ranging from 4 per cent for artillery and ammunition (plain scrap brought 2 per cent) to 62 per cent for railway rolling stock. If credit is given for transfer of properties from one government agency to the other, then over-all coverage percentage might be as high as 44 per cent of all surplus war material for World War I.

Mistakes were made during that time, as might be expected from the fact that a considerable portion of the war goods surplus was in France when World War I came to an end, with no orderly plan for disposition in existence. The Federal departments competed with one another. A field day for speculators began. Finally, the War Department in January, 1919, made the first attempt at coördination by establishing the Office of the Director of Sales, and similar action was later taken by the Navy Department, while the Shipping Board did not get around to a sales department until 1921. As far as over-all coördination, that was not accomplished until July, 1921, when the Office of the Chief Coördinator was established, which set up sales policies for the disposition of all surplus goods.

Much criticism of the wasteful and unplanned procedures for unloading surplus material in World War I was made by the Graham committee of the House of Representatives, which charged that the depression of 1920 and 1921 was the outcome of such policy or lack of policy. Just as an example, one authority points out that 15,000 Liberty airplane motors were left on the market at the end of the first World War—a large percentage of which was sold as junk.

Colonel La Brum's article reviews the basic constitutional and statutory authority of Congress to dispose of government property and sums up with the following

conclusion (apparently as of the end of 1943):

> Authority may exist in Federal officers to sell or otherwise dispose of government property either by virtue of specific congressional enactment or by implication from legislation provision. However, it should be noted at this point that except in the cases of disaster relief and military necessity, Federal officers enjoy only restricted powers as limited agents; consequently, if no actual authority exists in these officers under the terms or implications of specific legislation, no authority can be implied or created under the doctrine of apparent authority or estoppel.

THE Baruch-Hancock report, released in February, 1944, to James F. Byrnes, Director of the Office of War Mobilization, laid down the following ten principles for the guidance of the Surplus War Property Administartor:

1. Sell as much as he can as early as he can without unduly disrupting normal trade.
2. Listen to pressure groups but act in the national interest.
3. No sales, no rentals to speculators, nor to promoters.
4. Get fair market prices for the values with proceeds of all sales going to reduce the national debt.
5. Sell as in a goldfish bowl, with records always open to public inspection.
6. As far as practicable, use the same regular channels of trade that private business would use in disposing of the particular properties.
7. No government operation of surplus war plants in competition with private industry.
8. No monopoly; equal access to surpluses for all businesses; preference to local ownership, but no subsidizing of one part of the country against another.
9. Scrap what must be scrapped but no deliberate destruction of *useful* property.
10. Before selling surplus equipment abroad assure America's own productive efficiency on which our high wages and high living standards rest.

The report recommends four major outlets for actual disposition of goods: (1) the Treasury Department for consumer goods other than food; (2) the Reconstruction Finance Corporation for capital and producer goods; (3) War Food Administration for food supplies; (4) the Maritime Commission for marine materials.

A few days after publication of the Baruch report, President Roosevelt, by Executive Order No. 9425, dated February 19, 1944, set up a Surplus War Property Administrator, who later was appointed in the person of William L. Clayton. The same order also added a fifth agency to the four disposal agencies above enumerated. This was the Foreign Economic Administration to handle disposition of surplus war property outside of the United States.

Subsequently, Colonel La Brum's article notes, the Surplus War Property Administration, by Regulation No. 1, dated May 8, 1944, added three new agencies to the five agencies mentioned for administering disposition of surplus property—making eight in all. The three new agencies were: (1) Navy Department, to dispose of combat ships and naval auxiliaries; (2) National Housing Agency, to dispose of housing property other than that under the War and Navy departments; (3) Federal Works Agency, to dispose of surplus property *of the type of facilities financed through FWA.* All eight agencies would, of course, function subject to the Office of Surplus War Goods Administration, or whatever other top control body Congress decides to set up.

PUBLIC utility industries, including both the operating and manufacturing branches, have an understandable interest in the prospective distribution of surplus war goods of a nature which might be used in future utility operations. This would not only include utility plant items such as generating stations now being operated at various military and naval establishments, floating power items, railroad mobile generating items, and so forth, but also smaller supplies, such as wire, poles, telephone instruments, and switchboards, and even trucks, jeeps, bulldozers, trenchers, and ordinary operating, maintenance, and construction tools and supplies.

The electric utilities particularly look forward with some anxiety to the disposition of generating plants at military establishments—many located in strategic

areas where they might be tied in with either publicly or privately owned utility operations. Under a policy giving preference to publicly owned utilities, private electric companies might stand little chance of picking up any of these properties when the military establishments they were designed to serve are abandoned or curtailed.

Despite the spirit of the original Baruch-Hancock report, which would seem to discourage if not preclude any general policy of letting surplus war goods get into the hands of government agencies to be operated in competition with private business, there is reason to believe that privately owned utilities will not even stand on an equal footing in bidding for these properties in competition with public bodies, because of policy preferences favoring public bodies which have so often and consistently characterized administrative policies of the present Federal government in any field dealing with public utilities.

First of all, there has apparently been an important change made since the Baruch-Hancock report, in the Federal agency to dispose of government surplus utility plant facilities. The Baruch-Hancock recommendation would have released them through the Reconstruction Finance Corporation. But it is not certain that the Federal Works Agency, successor to the old Public Works Administration, a probable inheritor of its strong pro-public ownership policies, will not handle the sales, if any, of such property by the Federal government. This, at least, might be one view of the language of the Surplus War Property Administrator's Regulation No. 1 qualifying FWA as a disposal agency.

Two pieces of House-approved legislation now pending on the Senate calendar definitely deal with this subject. One is known as the Property Management Act (HR 2795). This would apparently give the Federal government (including TVA, Reclamation Bureau, etc.) first call, followed by state governments, municipalities, and public districts and nonprofit coöperatives in the order named. TVA and Reclamation Bureau are known to be interested in Army power plants in certain areas which could be used to firm their hydro supply after the war.

A definite preference for public bodies is not exactly clear in the House-approved version of the Property Management Bill, although the language which directs the distribution of surplus war goods in such a way as to permit states, co-ops, etc., opportunity to fulfill their function, would seem to imply such a preference. There was some talk in Washington, however, that Senator LaFollette (Progressive, Wisconsin) might seek an amendment to make the priority in favor of public bodies definite and absolute. Whether the Senate will move in this direction or modify the language of the House-approved bill in the other direction—more in keeping with the spirit of the Baruch-Hancock report—was a matter of speculation.

The other bill passed by the House, dealing more definitely with the disposal of surplus war goods, is the so-called "Colmer Bill" (HR 5125). The Colmer Bill as it cleared the House contained no clear-cut preference in favor of public agencies, but did state a policy allowing them "opportunity to fulfill their legitimate functions." Whether this amounts to a preference is debatable, in view of other rather vague statements of policy in the bill purporting to safeguard private enterprise, especially small business. An attempt, however, to amend the bill on the House floor, to knock out mention of "coöperatives," was defeated.

As these lines were written, a serious disagreement with the Senate and the House loomed over the Colmer Bill. The House favored control of surplus war goods disposal by a single administrator. A Senate committee, working on companion legislation, favored control by a board. It was thus quite likely that the final bill would have to be written in a conference between the two houses and might even emerge in a form entirely different from either the House-approved version or the bill the Senate was expected to pass.

Conversion of "Big-Inch" oil pipe lines to natural gas is restricted by the Colmer Bill. Representatives from coal-mining areas succeeded in putting an amendment in the Colmer Bill which would forbid the sale, without further specific congressional approval, of the two great pipe lines built to transport petroleum supplies to the eastern coast. They point out that the only logical buyers of the "Big-Inch" lines would be natural gas companies, which would, in that event, convert them to gas transportation and—in the view of these representatives — throw thousands of coal miners out of work. Three other Colmer Bill restrictions of some interest to the public utility industries were: (1) that no plant costing more than $1,000,000 should be disposed of without approval of a majority of an advisory board set up under the bill. This board is composed principally of Cabinet officers and war agency chiefs (2) that disposal of aluminum plants costing more than $5,000,000 should be subject to congressional approval (3) that proceeds from the sale of surplus war goods should be earmarked for application toward the reduction of the national debt and no other purpose.

THE above-mentioned article by Colonel La Brum did not go into these utility ramifications, although the author was himself in civilian life a member of a Philadelphia firm quite active in matters concerning utility regulation. Colonel La Brum, after a broad and somewhat scholarly analysis of the overall surplus property disposal picture, including such varied items as real estate

tax loss on government property, Lend-Lease, machine tools, resale to former owners, small business firms, food, aircraft, synthetic rubber, and shipping, makes one positive conclusion as follows:

> Out of the welter of divergent views on the subject of disposition of surplus property one thought emerges as practically unanimous; that is the necessity and desirability of placing responsibility for an adequate program in one central agency. In this way it is hoped to avoid the errors and uncertainties of World War I.
>
> The Under Secretary of War affirmed this policy when he announced that the established policy of the War Department was in favor of a central disposal body once material has been declared surplus to the needs of the procuring or owning agency.
>
> One authority on the subject expresses the same thought in recommending the creation of a Federal War Surplus Sales Board, to be managed by business executives, with labor representatives and other advisory groups. The appointment of industrial advisory committees for each important commodity (perhaps twenty-five to fifty major commodities are suggested) to function in an advisory capacity to this central agency is proposed. This plan includes staffing such a board with trade experts, sales, and promotion personnel, and divisions relating to advertising, publicity, transportation, and claims. On the other hand, it has been said that there is no real necessity of creating any new government agency to dispose of war surplus; that the present government agencies are competent to dispose of material falling within their jurisdiction.
>
> Present executive procedure under Executive Order 9425 and the Surplus War Property Administration created thereby, consists of the use of a policy-making group headed by the Surplus War Property Administrator, but contemplates the utilization of existing government departments and agencies for the sale of material specifically assigned to those agencies for disposal.

He adds that industry has also expressed the same idea with respect to placing the responsibility in a single independent commission for adequate disposal policies. Perhaps something like this will be done, but not unless Congress, in the process of enacting pending reconversion legislation, makes allowance for such adequate leeway.

SOME indication that the Rural Electrification Administration is actively seeking to obtain for government-subsidized coöperatives a priority right to purchase millions of dollars worth of electric generating equipment owned by the United States was seen in a news story in the *New York Herald Tribune* of August 20th, which purported, without naming utility executives, to reflect their reaction. The *Herald Tribune* item stated:

> Built by the government to power marginal munitions plants, the fate of some 350,000 kilowatts of generating capacity, scattered among highly industrial sections as well as in outlying regions, is being questioned. REA asserts that this power plant, plus four 30,000-kilowatt floating plants and other mobile units, should be reserved for coöperatives.
>
> Besides fearing that the government, if not through REA, then through some other agency, may use this plant as the nucleus for further tax-financed encroachments on private utilities, utility men challenge REA's move as an attempt to secure unfair advantage over private utilities in the purchase of surplus war property.

Alarm of the utility industry was said to stem from recent testimony of Claude R. Wickard, Secretary of Agriculture, before the House Committee on Departmental Expenditures, in connection with the Surplus Property Act of 1944. In substance, Wickard declared that REA had allotted $110,000,000 to coöperatives and was ready to allot another $100,000,000 to others to be spent on improvements and extensions when materials are available. He expressed hope that "a large share" of the generating plants and other electric equipment which becomes available would be reserved for coöperatives.

The *Herald Tribune* story, commenting on this, made the following statement:

> Utility men feel, on the other hand, that if anyone should have access to such plant and equipment, it should be themselves. In any event, they argue, the property should be allowed to go to the highest bidder.
>
> Development of additional rural business is high on the list of projects to be taken by the private utilities when hostilities cease, executives who commented on the REA plan declared, explaining that private utilities still serve two out of every three farms wired for electricity, despite the existence of some 800 rural coöperatives throughout the country.

It is noteworthy that while requesting a large share of the equipment for coöperatives, Mr. Wickard did not specify what properties were desired. There is speculation whether, if REA is to be so favored, other government power-producing agencies will not immediately lay claim to the sale of government-owned plant.

—F. X. W.

Courts Back SEC "Death Sentence" Rulings

FEDERAL District courts, and in many instances United States Circuit Courts of Appeals, have given 100 per cent support to the Securities and Exchange Commission in its determination of what is "fair and equitable," in voluntary plans submitted under § 11(e) of the Holding Company Act and approved by the commission, according to a recent survey, said T. J. O'Connell in the *New York Herald Tribune* of August 20th.

The importance of the § 11(e) plans, said Mr. O'Connell, is that they are actually the "death sentence" provisions of the act in operation, whether they are purely voluntary, or in anticipation of action against the companies by the commission under § 11(b), or in direct response to orders to effect compliance.

The § 11(e) plans are always for the purpose of effecting compliance with the provisions of § 11(b) (1)—geographical integration—or § 11(b) (2)—corporate simplification — otherwise known as the "death sentence" provisions. They are not to be mistaken for voluntary plans involving refinancing proposals, which have no bearing on § 11(b), Mr. O'Connell emphasized.

DURING the last two years all of the following § 11(e) plans taken to the Federal District courts for enforcement orders, after the commission approved them, and in some instances to the Federal appellate courts, have been upheld: Columbia Oil & Gasoline Corporation, dissolution; Puget Sound Power & Light Company, reorganization; United Light & Power Company, dissolution; United Public Utilities Corporation, partial dissolution; Southern Colorado Power Company, reorganization; North American Gas & Electric Company, dissolution; Central States Power & Light Corporation, dissolution; North Continent Utilities Corporation, dissolution; Consolidated Electric & Gas Company, dissolution; Clarion River Power Company, merger; American Gas & Power Company, partial dissolution; International Utilities Corporation, reorganization and merger; Jacksonville Gas Company, reorganization; Community Power & Light Company, reorganization; Great Lakes Utilities Corporation, dissolution.

The United Light & Power Company dissolution plan was unanimously approved by the Federal District Court and the United States Circuit Court of Appeals for the Third Circuit. It is now pending before the United States Supreme Court for review on appeal by Otis & Co.

The reorganization plan of Southern Colorado Power Company was approved by the Federal District Court but is now pending before the United States Circuit Court of Appeals for the Tenth Circuit for review on appeal by a preferred stockholder.

Another plan, that of Laclede Gas Light Company, recently was approved in the Federal District Court in St. Louis.

ALL of these § 11(e) plans, with but one or two exceptions, were contested either by security holders or by the indenture trustees.

In addition to these, a great many plans for compliance with the provisions of § 11(b)—geographical integration and corporate simplification — have gone through without any court enforcement whatever. This came about, Mr. O'Connell explained, because they were of such a nature as to be capable of being put through by the companies involved with-

out court help, and because no objections were raised by security holders or others.

In most instances the plans when submitted have the tacit approval of the staff, at least in their major elements, before hearings are held. This coöperation has saved much valuable time and expense for the officials of the holding companies and the representatives of the government.

A Symposium on the NARUC Depreciation Report

THE much-discussed proposed report of the National Association of Railroad and Utilities Commissioners was the subject of brief articles by three well-known authors on regulatory subjects in the May issue of *The Journal of Land & Public Utility Economics.* Favoring the report was Asel R. Colbert, chief of the accounts and finance department of the Wisconsin Public Service Commission. Mr. Colbert is a member of the special committee, headed by Commissioner Nelson Lee Smith of the FPC, which prepared the report and his conclusion frankly states:

> The writer has been a member of the NARUC Depreciation Committee since its inception in 1937 and has participated actively in the work of preparing the report. In these circumstances it is difficult to assume a completely disinterested attitude in appraising the worth of the document. However, viewing the report objectively, it is the opinion of the writer that it is worthy of careful study by all interested in regulatory matters. It will no doubt lend impetus to the movement already well under way for depreciation accounting by all utilities. Likewise, it should assist materially in bringing into general application a consistent treatment of depreciation in rate cases so that in the future there will probably be a greater tendency toward the use of depreciation as recorded in the accounts for purposes of both the annual expense and the deduction of accrued depreciation in rate base determinations.

PROFESSOR James C. Bonbright of the School of Business, Columbia University, was also generally favorable to the report and also mildly critical. He thinks the report reaches the "right conclusions for the wrong reasons." By "wrong reasons" he refers not to all the arguments, but principally to the contention that a straight-line reserve can be expected to measure "with reasonable accuracy" the actual depreciation of physical properties of a utility company. Professor Bonbright thinks this claim is going too far and that it is unnecessary in order to justify the validity of the straight-line method. He concludes:

> . . . I believe that a final judgment on the precise relationship between an appropriate accounting allowance for depreciation on the one hand, and so-called "actual depreciation" on the other hand, must await a more satisfactory answer than we now have to the prior question: What is the meaning of "actual depreciation"? At the present time I am doubtful whether it will be possible to reach an agreed-upon definition sufficiently precise so that the term will lend itself to scientific quantitative measurement. Meanwhile it seems to me that the practical arguments in favor of straight-line depreciation accounting, some though not all of which have been set forth in the NARUC report, are so strong that they justify the general adoption of this form of accounting quite without reference to the question whether or not a straight-line reserve can be said to measure "actual depreciation" with "reasonable accuracy."

LESTER S. READY, consulting engineer of San Francisco, thinks that the report is a "real contribution to the subject of depreciation accounting" and that "most of the conclusions and recommendations appear sound." He takes pointed exception, however, to the NARUC committee's so-called "recommendation No. 42." In a few words, this states that while the sinking-fund method of depreciation accounting may sometimes be used in rate making (when it is impracticable to determine accrued depreciation), the interest rate employed under such circumstances "should be the

"BUT, LADIES, THERE NEVER HAS BEEN A CASE OF A TELEPHONE POLE STRIKING A MOTORIST EXCEPT IN SELF-DEFENSE"

same as the rate of return" which is applied to the undepreciated rate base. Mr. Ready thinks that in this choice between two extremes — (1) the straight-line formula, or (2) sinking-fund formula with interest rate equal to return—it is doubtful whether either extreme fulfills the object of accruing reserve at the same rate as that of the accruing depreciation. Mr. Ready states:

> . . . The conclusion and recommendation of the committee — that either the straight-line formula or the sinking-fund formula, with the fair rate of return as the interest rate, be used—propose the use of one of two extremes neither of which is correct. The aim should be to apply the particular formula which meets the requirements of sound and mathematically correct depreciation accounting and this should contemplate a basis lying somewhere between these extremes.

ANOTHER current article of interest along this line, although dealing with the broader field of establishing a "prudent investment rate base" in the light of the recent Hope Natural Gas decision, is the contribution by Dr. John Bauer, director of the American Public Utilities Bureau, in the June, 1944, issue of *The Yale Law Journal*, page 495. Dr. Bauer reviews the problems of judicial valuation concepts set in motion by Smyth *v.* Ames in 1898 and subsequent decisions, and arrives at the conclusion, generally, that the Hope Natural Gas Case has made it possible for commissions to set up a most precise and practical rate base which

is virtually a translation of original cost accounting minus the amount of accrued depreciation.

In determining accrued depreciation, Dr. Bauer's suggestions did not seem to this writer to postulate any great degree of precision. For one thing, he suggests that where a utility depreciation reserve has been established in excess of actual depreciation requirements (as charged against the Bell system by the FCC special investigation report, incidentally), the amount of such reserve should be deducted as accrued depreciation, even though such an amount of depreciation in the physical property has, admittedly, not occurred. On the other hand, where (as Dr. Bauer says is much more generally the case) utilities have not set aside sufficient funds to take care of depreciation, the amount of *actual* depreciation accrued should be the measure of the deduction.

Aside from the superficial "heads-I-win, tails-you-lose" appearance of this attitude, Dr. Bauer's general outline for arriving at a determination of actual accrued depreciation hardly suggests exact mathematical procedure. He states:

> Establishment of the initial depreciation requires inspection and testing of physical wear and decay and also calculation of functional decline. Physical depreciation is due to the deterioration of existing plant units and can, to a large extent, be determined by inspection and measurement. But functional depreciation, either obsolescence due to technological advances or inadequacy caused by increasing service requirements, is not due to conditions embodied within the actual plant units, but rather to the greater efficiency or other superiority of available substitutes. As better suited units become available, the ones in service depreciate accordingly by loss in total remaining serviceability. Determination of functional decline, therefore, depends upon service comparisons of actual with available plant units, considering relative operating efficiency, required repairs, depreciation, and other expenses incurred in regular operation. The superiority of available substitutes is offset by the depreciation of the actual units, for the return on the depreciated sum plus the greater relative operating expenses of the actual units equals, in relation to a given volume of regular production or service output, the return on the full cost of the available substitutes plus their lower operating expenses. The depreciation deduction thus produces capital equivalence between the existing units and the full capital cost of the available. Such determinations involve considerable factual uncertainties and rough approximations, but they must be made if a definite accounting rate base is to be provided for the future needs of workable regulation.

It is noteworthy from the foregoing that Dr. Bauer, whose own background of experience has been and is largely in the field of appraisal and physical estimation of depreciation, apparently distrusts the absolute verity of cold-blooded bookkeeping conclusions derived principally from life tables, although he states that he generally is in sympathy with the FPC accounting classifications and recent recommendations of the NARUC Depreciation Committee. He added, however:

> . . . Specific and detailed accounting for current changes in plant and accrued depreciation still does not provide, however, satisfactory data for the calculation of a prudent investment rate base, unless proper initial adjustments are also made in regard to present existing plant and depreciation.

As to the prudent investment rate base, which Dr. Bauer sees as directly foreshadowed by the Hope Natural Gas decision, the company would get a return only on its own actual or unimpaired investment, meaning original cost—minus accrued depreciation, and the amounts of other "consumer contributions" which have been financed through charges to operating expenses. Thus he approves the FPC's disregard, as a rate base item in the Hope Natural Gas Case, of some $17,000,000 of well-drilling costs presumably financed out of past operations.

This reviewer was led to speculate how Dr. Bauer, or for that matter the Supreme Court, might view this situation: Suppose previous so-called improper charges to operating expenses, year after year, had, according to the Hope Natural Gas Case view, resulted in accumulated unearned benefits to the corporation equal to, or in excess of, the *entire cost of the property*. Would the rate base then be set up as nothing, or even a minus figure, with the title of the property moving to the consumers, or with the company continuing to operate merely as a nonprofit trustee?

Would the utility's owners, in the event of a "minus rate base," so determined, become actually liable in an action by consumers to recapture the excess amount of past contributions — and thereby be obliged to put some money back into a business they no longer owned? Should the present generation of ratepayers, in a contrary situation (*i.e.*, where past operations had not been profitable on any cost basis), be subjected to rate increases necessary to amortize past deficits? Does not such a *reductio ad absurdum* challenge the wisdom of abandoning the "over-the-dam" theory which is just as practical a limitation in the field of regulation as ordinary statutes of limitations in the field of tort and contract law?

Independence for Regulatory Agencies?

CONCLUSIONS that plumb the depths of the democratic system, along with its inherent weaknesses and its strength, are involved in the work of James W. Fesler entitled "The Independence of State Regulatory Agencies."

Mr. Fesler, associate professor of political science at the University of North Carolina, explains that his inquiry is intended to supplement Professor Robert E. Cushman's "The Independent Regulatory Commissions." The principal purpose of his study, he says, is "to explore and evaluate alternative organizational arrangements." Professor Fesler, of course, is dealing with "independence" in terms of the extent to which regulatory commissions should be submissive to other branches of the state government, particularly the governor and the legislature.

He presents an able summary of other thinking on the subject (well documented), together with his own somewhat broad conclusions—which, to say the least, leave the problem pretty much unsolved; but there is much food for thought throughout. The politician, whose interest in good government is rather relative, will get some encouragement from the general admission that, on the surface, it would appear that things are going along about as well as could be expected under the democratic system.

However, the sincere student of government, whose concern is with the public interest and all of the elements involved, also will take much comfort in the fact that much thought has been devoted to the question of independence. There is evidence that improvement is being made and that commissions can be expected to take increasing cognizance of their responsibilities, regardless of the extent to which they are controlled by the legislature, the governor, or even the courts. In fact, these branches themselves may be expected to show continued progress in developing a sound philosophy of their own responsibility.

PROFESSOR Fesler significantly suggests that "each community gets the government it deserves and desires," as summarizing his thesis. He adds that the regulatory problem will be solved in each state in the degree that the standards of its state government rise. Standards, he says, will be set by the persons whom the people elect as legislators and governors, adding that "no tinkering with machinery can produce the degree of responsiveness to enlighten public opinion, the level of efficient performance, and the capacity for impartial consideration of cases on their merit that will characterize the government of a people that deserves, desires, and demands good government."

The definite impression one gathers from this inquiry is that it would not be healthy to set up a regulatory commission wholly independent of control by other branches of the government. However, the degree to which government control should be exercised is the big question and depends upon many circumstances. A commission with legislative, administrative, and quasi judicial powers indeed faces a monumental task

in attempting to attain anything approaching complete adequacy of performance. It seems that keeping as close as possible to the public pulse and understanding the myriad of events which may affect that pulse tend toward increasingly better service.

Involved, then, is simply the democratic process at work—assuming that the people elect a good governor, a good legislature, and good men are appointed on the commissions.

—C. A. E.

THE INDEPENDENCE OF STATE REGULATORY AGENCIES. By James W. Fesler. Publication No. 85. Public Administration Service, 1313 East 60th Street, Chicago, Illinois. 1942. $1.50.

Country Gentleman Surveys Rural Electrification

PREPARED for the national farm magazine, *Country Gentleman*, by the research department of The Curtis Publishing Company, a recent 34-page booklet entitled "Rural Electrification — a Postwar Market Forecast" presents a challenging survey of possibilities for rural electrification by the electric industry, as well as the coöperative movement sponsored by the Rural Electrification Administration.

The high lights of this booklet, as summarized therein, are as follows:

1. It is estimated that electric service could be extended to 5,131,483 new rural consumers in the United States under proposed state rural electrification programs now contemplated for the war and postwar periods. Approximately 11.2 per cent of these potential consumers would be connected in the war and postwar transition periods.

2. It is believed that such a program could be made self-liquidating if proper "standards of feasibility" are established and consistently maintained and if the principle of "area coverage" is followed.

3. To carry out this program it is estimated that:

(a) Total costs and expenditures would aggregate at least $3,502,472,000, of which approximately 14.3 per cent would be spent in the war and postwar transition periods.

(b) 1,751,752 miles of line would be required costing $1,590,315,000. Of these amounts, about 9 per cent of the line miles would be constructed and 10.3 per cent of the cost would be incurred in the war and postwar transition periods.

(c) A total of $571,389,000 would be spent for wiring, about 13.1 per cent of which would be expended in the war and postwar transition periods.

(d) Rural consumers would buy at least $960,186,000 worth of farm and home electrical equipment. Of this amount, they would probably spend about 19.3 per cent during the war and postwar transition periods.

(e) Rural consumers would install at least $380,585,000 worth of plumbing equipment, of which about 20.7 per cent would be bought in the postwar transition period.

4. The greatest development in postwar rural electrification, in terms of new consumers and total expenditures, will probably occur in the South Atlantic, East North Central, East South Central, West North Central, and West South Central regions.

5. With respect to the total costs and expenditures of the program, it is estimated that:

(a) $150,000,000 or more will be spent in each of 4 states.

(b) From $100,000,000 to $150,000,000 will be spent in each of 11 states.

(c) From $50,000,000 to $100,000,000 will be spent in each of 12 states.

(d) From $10,000,000 to $50,000,000 will be spent in each of 13 states.

(e) Less than $10,000,000 will be spent in each of the remaining states.

THE booklet goes on to say that rural electrification is one of the brightest spots on the postwar horizon, "mutually beneficial to both rural populations and private industry." One of the most attractive features of the *Country Gentleman* survey is the series of ten graphic illustrations dealing with the breakdown of electrified farms by region; estimated potential rural electric customers; estimated cost of serving the same, also broken down by states; estimated cost and mileage of new line construction; cost of farmstead wiring; a state-by-state breakdown of farm and home equipment expenditures, with a similar illustration for plumbing expenditures.

There are several items revealed by these charts of passing interest. There is the fact that while the percentage of electrified farms to date varies from 21.9 in the East South Central United States to 89.5 in the Pacific area (general average 44.9), the per cent of wired rural nonfarm dwellings varies only from 53.8 per cent in the West South Central to 84.2 per cent in the Pacific area (general average 73.4). Again, the proposed postwar rural electrification expenditures would be most heavy in neither the wide open spaces of the far West nor the more affluent East. The four states in each of which over $150,000,000 would be spent are Texas, Missouri, Kentucky, and Tennessee. Comparatively little would be spent in New England and Mountain states regions.

More Electric Energy for the Farmer

MANUFACTURERS and distributors of electrical equipment and appliances have a tremendously large field for the development of a market among thousands of American farmers who would increase their profits by greater use of electric energy. This is the opinion of Frank E. Watts, executive of *The Farm Journal*, who admits that the farm market is by no means a new one but one which has been decidedly neglected. Mr. Watts' views were expressed in a brochure entitled "Distribution—The Bottleneck of Farm Electrification."

Recognizing that it is more difficult to develop a sales plan for farm communities than for urban communities, Mr. Watts nevertheless placed the responsibility squarely on the shoulders of the electrical industry to provide the farmer with a distribution service that satisfactorily meets his needs and requirements. He concluded:

> . . . farm electrification will have a far-reaching effect upon the social and economic welfare of the nation. Agriculture and industry today more fully recognize the interdependence of each upon the other. Agriculture must be prosperous if industry is to prosper and vice versa. America needs more family farms which are more profitable. Coupled with other forces now at work, electricity will contribute largely to this desirable end, and herein lies a powerful and motivating force for the purchase of electrical equipment for greater production at a profit.

Mr. Watts said in the postwar period the farm will represent the first market of the electrical industry because the farmer is assured of a market for all that he can produce and will be less apt to hesitate to make purchases, whereas the industrial worker, facing uncertainty of permanent employment, will be more conservative in spending whatever savings he may have accumulated.

MR. WATTS indicated the threat of REA coöperatives to go into the equipment and appliance sales business has been brought on by a lack of adequate distribution forces in private industry. He saw some danger in development of such coöperative sales organizations if they operate in a manner which will not return them sufficient profit to promote the market and will at the same time destroy private industry's efforts. He urged strongly that any sales organization should be correlated with competent service organizations — to assure the farmers that their equipment will always be kept in repair.

Mr. Watts listed 120 uses for electricity on the farm and 90 uses in the farm home. He said that of the 2,550,000 farms electrified, over 2,150,000 are without electric ranges, more than half of the electrified farms are without washing machines, 1,500,000 have no radio, 2,000,000 have no electric ironer, over half have no vacuum cleaner, 500,000 dairy farms have no electric milker; there is a demand for hundreds of thousands of cream separators, over 700,000 farms are without milk coolers, 1,750,000 are without a modern water system.

Mr. Watts emphasized repeatedly that the effective sales approach to the farmer was that he could increase his production and make more profit at less cost.

The March of Events

REA Postwar Grant Proposed

A PROPOSAL for an additional $700,000,000 grant by Congress to the Rural Electrification Administration for construction of new lines over a 5-year postwar period was advanced in St. Louis last month by the planning committee of the National Rural Electric Coöperative Association following a 2-day meeting with the association's executive committee.

The grant, committee members indicated, when lent to coöperatives, would build enough new lines to electrify approximately 80 per cent of the farm homes in the United States. The proposal was approved by the executive committee and was scheduled to be submitted to REA.

E. J. Becker, Petersburg, Illinois, chairman of the committee, said that construction which could be done through use of the money would provide 380,000 man years of work. The committee adopted a resolution favoring employment of veterans in all phases of work.

Becker said that the $700,000,000 figure was reached after a nation-wide survey of rural electric coöperatives to learn the amount of construction which could be undertaken.

E. J. Stoneman, Platteville, Wisconsin, head of the association's executive board, praised the record made by the 879 borrowers of REA funds. Congress has made available approximately $525,000,000 for rural electrification since 1935, of which $501,000,000 has been allotted. Although only $60,000,000 in REA loans has come due as yet, borrowers already have paid back $77,000,000, many REA coöperatives making advance repayments, it was reported.

REA, which halted its mass construction activities in July, 1942, because of the shortage of critical materials, has on file completed applications for $49,000,000 worth of new construction for which loan allotments have been made from previously appropriated funds. In addition, the agency has on file applications for loans totaling more than $113,000,000.

SEC Receives Financing Plan

THE Ohio Edison Company last month filed with the Securities and Exchange Commission a declaration covering a general program of financing which includes the retirement of $52,446,000 principal amount of its outstanding 4 per cent bonds and 198,952 shares of its preferred stock, $6 and $5 series, outstanding in the hands of the public.

Commonwealth & Southern Corporation, Ohio Edison's parent, joined in the application for authorization to effect the proposed transactions.

Funds for the program will be obtained by the issuance and sale of $30,962,000 principal amount of 30-year bonds of a series bearing interest at a rate not to exceed 3¼ per cent annually; by borrowing $10,000,000 from banks on instalment notes bearing interest at 2¼ per cent annually; by the issuance and sale of 180,000 shares of new preferred stock of a series having a dividend rate not to exceed 4¼ per cent annually; and by the use of approximately $17,000,000 in cash.

Commonwealth, for its part, will make contributions to Ohio Edison's common stock equity by transferring to it all of the outstanding shares of Pennsylvania Power Company, consisting of 110,000 shares with an underlying book value of $4,516,521, donating its right to receive the $1,149,707 cash cost of 12,134 shares of Ohio Edison's $6.60, $7, and $7.20 series surrendered and canceled on December 31, 1943, and surrendering for cancellations to Ohio Edison 1,162 shares of the latter's preferred stock, $6 series, at its cash cost to Commonwealth of $96,555.

It is not proposed in the program to retire the $26,089,000 principal amount of Ohio Edison's 3¾ bonds, due 1972.

MVA Proposed in Senate

A PROPOSAL to set up a Missouri Valley Authority to undertake the unified development of power, navigation, and flood-control projects throughout the nine states of the Missouri basin was advanced last month by Senator Murray, Democrat of Montana.

The Murray Bill would set up a 3-man commission (patterned after the Tennessee Valley Authority) which would assume control of dams and other projects in the 530,000-square-mile area drained by the Missouri river and its tributaries.

Senator Murray offered no estimate of the cost of the undertaking in a statement in which he said the territory affected would include substantial areas in North and South Dakota, Montana, Wyoming, Colorado, Nebraska, Iowa, Kansas, and Missouri.

Under the legislation, the MVA would be an independent government agency, headed by a board of three directors, appointed by the President, one of whom would be named chairman. The board members, after original terms of three, six, and nine years, would be appointed for 9-year terms and would draw annual salaries of $12,500.

Under the bill, the states would receive 5 per cent of the gross revenue received from water and power projects, the apportionment to be based on the value of property managed by the agency within the state. The MVA would be empowered to acquire any projects necessary to its operations.

Governor John Moses of North Dakota expressed opposition to the bill subsequently introduced by Senator Gillette of Iowa which would create an MVA giving first consideration to navigation.

"North Dakota and the other upper Missouri river valley states never can subscribe to a Missouri Valley Authority which does not recognize the just claims of irrigation for priority to Missouri river waters over navigation," the governor declared.

The Murray Bill was labeled by western water experts as "a threat to the entire West and its future." They predicted the measure probably would "not even have the support of the Senator's home state."

Colorado's state attorney general, Gail L. Ireland, said Senator Murray's proposal would "blow our entire western civilization all to hell." Ireland said he had not seen the measure and had not had a chance to study it, "but from reports it sounds like an exceedingly dangerous proposal. It would undo everything that we in the West have been trying to do."

Upholds Land Grant Rates

In a letter placed in the record as the Senate Interstate Commerce Committee recently ended hearings on measures to terminate land grant rates, Secretary Forrestal stated that repeal of railroad land grant freight rates to the government would cost the Navy $80,000,000 to $90,000,000 a year during the war period. He also maintained the question of repeal was one for Congress to decide.

A special 50 per cent discount on war supply shipments applies on rail routes over land originally given to the railroads by the government. Mr. Forrestal's letter called attention to the view of Harold D. Smith, Budget Director, that government war costs would rise $20,000,000 a month in rail transport charges.

In other letters J. Monroe Johnson, Director of the Office of Defense Transportation, favored rate repeal, while Jesse Jones, Secretary of Commerce, opposed it during wartime.

R. V. Fletcher, vice president of the American Association of Railroads, contended the assessed value of all the land involved was only $34,136,345 and that the discount benefit to the government, running at approximately $20,000,000 monthly, long ago had balanced the railroad obligation.

Creation of a permanent 3-member Federal transportation authority, charged with coördinating rail, motor, and water transportation throughout the country, was proposed in a bill introduced last month by Senator Lister Hill, Democrat of Alabama.

The bill also would assure that all transportation rates and charges "shall be free from discriminations, preferences, prejudices, and inequalities," a provision which was interpreted as aimed at the present rail freight rate structure, which the South claims discriminates against its industrial progress.

Refinancing Plan Approved

The Securities and Exchange Commission recently approved the Mississippi Power & Light Company's refinancing program, including the issuance and sale of $12,000,000 of first mortgage bonds due in 1974.

Mississippi also will issue to Central Hanover Bank & Trust Company, New York, $2,000,000 in 2¼ per cent promissory notes, to be paid in 20 semiannual instalments beginning in March, 1945.

Under the refinancing plan, Electric Power & Light Corporation, Mississippi's parent, will surrender 20,182 shares of the subsidiary $6 preferred stock. Mississippi will then change the stated value of its outstanding 500,000 shares of common stock—all owned by its parent—from $2,500,000 to $4,750,000.

Proceeds from the sale of securities, together with treasury cash, will be used to redeem $15,000,000 of Mississippi's 5 per cent first mortgage gold bonds, due 1957, at 102½ plus accrued interest.

Mississippi will change its articles of incorporation to confer voting rights on the remaining outstanding shares of $6 preferred stock.

The commission also permitted Mississippi to shorten the period for inviting competitive bids on the new bonds from ten to six days.

As conditional to approval of the plan, Mississippi was ordered to create by December 31st a contingency reserve of $180,000 for the disposition of capitalized intrasystem profits contained in its gas plant account and to make other necessary accounting adjustments.

Offers Plan to SEC

The Electric Power & Light Company and its subsidiary, Arkansas Power & Light Company, last month filed with the Securities and Exchange Commission a joint declaration covering certain proposals, consummation of which will enable Arkansas to make the accounting adjustments ordered by the Arkansas Department of Public Utilities and, at the same time, effect simplification of its corporate structure.

Summarized, the program covers the surrender by Electric to Arkansas for cancellation

of 7,697 shares of $7 preferred stock and 1,233,638 shares of no par value common stock of Arkansas owned by Electric; the payment to Arkansas of $4,000,000 and the receipt by Electric from Arkansas of 1,070,000 shares of the latter's $12.50 par value common stock.

Arkansas will cancel 891 shares of reacquired $7 preferred and 453 shares of reacquired $6 preferred stock now held in its treasury; restate the $7 and $6 preferred stocks on its books at their liquidating value of $100 a share; redeem 39,934 shares of the $7 preferred stock at $110 a share, plus accrued dividends, such shares to be selected by lot, and create through such steps a capital surplus of $3,730,963.62, which would be used to make the required accounting adjustments.

Gets Time Extension

THE Securities and Exchange Commission recently granted the Cities Service Power & Light Company a year's extension of time in which to comply with provisions of the Holding Company Act.

On August 17, 1943, the commission ordered the company to limit its operations to a single integrated system composed of the Toledo (Ohio) Edison Company, the Ohio Public Service Company, and the Alliance (Ohio) Public Service Company by disposing of 20 subsidiaries. At the same time the Federal Light & Traction Company, a subsidiary of Cities Service Power & Light, was ordered to dispose of 7 subsidiaries.

Since both companies have divested themselves of interest in 8 subsidiaries and 11 other sales are under negotiation, the commission found "substantial progress in effecting compliance" with its order.

AGA Meeting Halted

THE American Gas Association has called off its regular Chicago convention, scheduled for October 5th and 6th. This in deference to the Office of Defense Transportation plea that meetings of all kinds should be suspended to avoid strain on the nation's overburdened transportation facilities.

The board of the AGA held a meeting late in August and set October 5th as the date of an informal meeting (Engineering Societies building, New York) for purposes of electing officers and receiving reports, but without formal speeches or full attendance.

Reorganization Hearing Postponed

THE Securities and Exchange Commission recently postponed from August 22nd to December 18th a hearing on the plan for reorganization of Consolidated Electric & Gas Company, under terms of the Holding Company Act.

The postponement was granted at the request of the company, which stated that it expected to dispose of 5 of its remaining 13 domestic public utility subsidiaries by the end of October.

Since filing a plan for compliance on June 23, 1943, Consolidated has reported divestment of 17 subsidiaries and the reduction of its outstanding debt securities from $31,433,500 to $22,233,500.

The commission at the same time extended to August 1, 1945, the exemption from provisions of the Holding Company Act of a Consolidated subsidiary, the Islands Gas & Electric Company and 6 of Islands' subsidiaries.

WPB Acting Chairman Appointed

LIEUTENANT Commander J. A. Krug was appointed on August 24th by President Roosevelt as acting chairman of the War Production Board during Donald M. Nelson's absence in China. He was born in Madison, Wisconsin, on November 23, 1907. Mr. Krug received his formal education entirely in his home city, graduating from the University of Wisconsin in 1929 with a major in economics. Staying on at the university, he received a master's degree in public utility management one year later.

Mr. Krug was appointed head of the power branch of OPM in June, 1941, and held the same position with WPB until he became deputy director general and head of the distribution bureau in August, 1942. He was appointed director of the Office of War Utilities in the early part of February, 1943, and later that month was also appointed program vice chairman, which positions he held until April, 1944.

He left the WPB to accept a commission as Lieutenant Commander in the United States Navy, where he was attached to the office of the Under Secretary of the Navy.

President Roosevelt's acceptance of the resignation of Charles E. Wilson as executive vice chairman of the WPB was said to represent a complete victory for Chairman Donald M. Nelson in the bitterest and most important internal fight which has shaken the White House in several years. Nelson's victory was reported to mean that his program for the swift reconversion of industry will go forward at the topmost speed war production will permit.

Railroad Antitrust Suit

THE railroad antitrust suit filed by United States Attorney General Biddle in Lincoln, Nebraska, is "absolutely without merit," Wilson McCarthy, one of the defendants, declared recently. The Attorney General's charge that western railroads have stifled the utilization of improved railroad technology was characterized by Mr. McCarthy as "plain baloney"

and he pointed out that the greatest improvements in railroad technology in the last decade have been started by the western railroads.

McCarthy is named twice as a defendant in the antitrust suit, once as president of the Denver & Salt Lake (Moffat) road, and then with Henry Swan as a trustee of the Denver & Rio Grande Western Railroad.

Another Denverite included in the host of defendants in the suit is William A. Maxwell, Jr., president of the Colorado & Wyoming Railroad.

"There is nothing constructive in the criticism the Attorney General and his assistant, Wendell Berge, made of the railroads," McCarthy declared.

California

Delay on Hetch Hetchy

FEDERAL Judge Michael J. Roche on August 28th gave the city of San Francisco until February 28th to work out a method of distributing its Hetch Hetchy power. He postponed the effective date of a "stop distribution" injunction against disposal of the power to the Pacific Gas and Electric Company, a step forbidden by the Raker Act.

San Francisco has been selling the entire Hetch Hetchy output to the Riverbank (California) aluminum plant, which closed recently and left the city facing an annual revenue loss of $2,400,000.

San Francisco's latest plan for disposal of the $2,400,000 worth of Hetch Hetchy power through an exchange deal with the Pacific Gas and Electric Company was laid before Abe Fortas, Under Secretary of the Interior, by Mayor Lapham, in Washington, D. C., recently, and was rejected.

Lapham telephoned Utilities Manager E. G. Cahill. According to Cahill, the mayor reported that he, Marshall Dill, president of the utilities commission; Dion Holm, assistant city attorney; and Louis Perrin, Hetch Hetchy engineer, had met with Fortas, Norman Little, assistant to the Attorney General, and Interior Departmental officials.

Under the terms of the proposal submitted to Fortas, the city would use 200,000,000 kilowatt hours of Hetch Hetchy power for municipal needs and would turn over to the PG&E 300,000,000 kilowatt hours. In return for the 300,000,000 kilowatt hours, the PG&E would distribute the 200,000,000 kilowatt hours to municipal establishments at some 800 points.

Fortas suggested an alternative proposal which Mayor Lapham agreed to work for in San Francisco. In effect, the city would buy or lease various distribution and transmission facilities of PG&E, paying cash instead of trading power. It would thereupon directly serve its own municipal needs and whatever customers it might have.

This would not solve San Francisco's problem, as it would leave the city with only about one-half of its load committed. Pacific Gas and Electric also would have to look elsewhere for power previously received from the city.

Union Accepts Negroes

MEMBERS of the AFL Amalgamated Association of Street and Electric Railway Employees in Los Angeles have voted to accept Negroes into their union and work with them on streetcars and busses of the Los Angeles Railway Company.

D. D. McClurg, union president, stated at meetings of the members that the President's Fair Employment Practices Committee had directed that Negroes be employed and that the union's executive committee considered this to be a government order.

Colorado

Gas Case to U. S. Supreme Court

AFTER five years of controversy, the Denver gas rate case, which now involves nearly $4,000,000 in impounded funds and proposed rate reductions which would save Denver pipeline consumers approximately $1,000,000 a year, was scheduled to reach Washington late last month.

Petitions of the two companies in the case, the Colorado Interstate Gas Company, and Canadian River Gas Company, asking the Supreme Court to take jurisdiction by issuing a writ of certiorari were scheduled to reach Washington at the same time copies of them were served on City Attorney Lindsey and attorneys for the Colorado-Wyoming Gas Company, the third corporation in the controversy.

Both petitions ask the Supreme Court to grant a review of the rate reduction order entered by the Federal Power Commission in the Denver case and a decision of the tenth circuit court of appeals upholding that order so some clarification may be obtained of two recent Supreme Court decisions in natural gas rate cases—the first to be decided by the high court, and, therefore, important for legal precedents established.

Florida

FPC Suspends Proposed Rate Changes

THE Federal Power Commission on August 21st announced its order suspending the rate schedule filed by the Florida Power Corporation, St. Petersburg, providing for the sale and delivery of electric energy to the city of Quincy for resale and setting a public hearing concerning the matter for November 15th at Washington, D. C.

The order stated that the schedule filed by the Florida Power Corporation on July 15, 1944, to supersede the one now in effect may result in "excessive rates or charges to the city of Quincy, Florida; may place an undue burden upon ultimate consumers of electric energy; may be discriminatory; and will result in increased rates or charges which have not been shown to be justified."

At the hearing, the order added, the burden of proof to show that the proposed increased rates are just and reasonable shall be upon the Florida Power Corporation. The changes would result in an annual increase in charges of $13,965 or 20.5 per cent.

The commission's order suspended the proposed rate schedule until January 15, 1945, and provided that during the period of suspension the present wholesale rates being collected from the city of Quincy shall continue in effect.

Indiana

Utility Valuations Higher

INDIANA public utilities will have an assessed valuation of nearly $25,000,000 more than last year as a basis for 1945 tax payments, results of new valuations by the state tax board showed recently.

J. Russell Robertson, board secretary, said the holdings of railroads, telephone, power, heat, water, pipe lines, and other utilities have been assessed at a total of $725,649,579 this year for payment of taxes next year, compared with a total valuation of $700,684,689 fixed last year.

The state tax board assessed the Rural Electrification Membership Corporation in Indiana at $1,350,302 this year, or $143,638 higher than the 1943 figure of $1,206,664.

Kentucky

LG&E Plans Liquidation

A PLAN for liquidation of Louisville Gas & Electric Company of Delaware, holding company for the Louisville utility which the city is seeking to buy, would be filed with the Securities and Exchange Commission at an early date, Standard & Electric Company announced on August 28th in New York.

The announcement was made as Standard filed with the SEC a reorganization plan amending its proposal for recapitalization which the commission rejected May 31st. Standard said LG&E of Delaware has contracted to sell its investment in Madison (Indiana) Light & Power Company—which will be purchased by a civic group — and would file a plan for its own liquidation under which its stockholders would share in distribution of all its assets, consisting principally of common stock of LG&E of Kentucky.

A spokesman for the syndicate which is working with the city in its efforts to buy the utility property in Louisville declined to be quoted directly on an interpretation of Standard's move, in the absence of Mayor Wilson W. Wyatt, who was in New York at the time with Arthur Hopkins, president of the board of aldermen, in connection with the city's negotiations.

Maryland

Dismissal of Suit Asked

ALLEGING that a taxpayers' suit to restrain the city of Baltimore from paying alleged excessive rates for street lighting was brought to "gratify a spirit of spite" and constitutes "an act of irresponsibility and is an abuse of the powers of the court," the city recently asked that the case be dismissed.

The answer to the proceedings, filed by Simon E. Sobeloff, city solicitor, alleged that George A. Funch, counsel for three taxpayers who brought the complaint, instituted the suit because he was disappointed in his efforts to be employed by the city as a special counsel to seek reduced rates from the utility company.

Eugie E. Tyler, Thomas W. Lydon, and

Charles W. Markley, the taxpayers, contended that the city has been paying an excess of $600,000 a year for the past seventeen years for street lighting and that city officials were derelict in their duty in not demanding a lower rate.

Michigan

Profit Fund Figured

UNIFORM distribution of the $10,450,000 rebate in revenues of the Detroit Edison Company, ordered August 4th by the state public service commission on petition of the city of Detroit, would give residential power consumers $3,268,000, Richard A. Sullivan, city utility rate analyst, calculated recently.

Sullivan figured the rebate for the various categories on the basis that the total amount of the cut ordered represents 11.75 per cent of the company's total estimated electric revenue for 1944 of $88,870,000.

On the same basis, farm consumers would receive $196,000, commercial $2,526,000, industrial $4,062,000, street lighting $107,000, other public agencies $63,000, other electric utilities $159,000, and railroads and railways $61,000.

The commission order directed the company to submit by September 15th a plan for distribution of the rebate.

Missouri

New Utility Ruling

THE state public service commission last month ordered every utility in Missouri to credit income from investment of its depreciation reserves against the depreciation fund itself and to cut annual charges against operating costs by the amount of those earnings.

That would give utility users the benefit of the reduction in depreciation figures, because of the corresponding cut in operating costs which are included in the determination of rates.

To determine the earnings of depreciation fund investments, the commission ordered the utilities to file statements by October 2nd showing income from depreciation accounts, a balance sheet, and an income statement for all income for the year ending July 31st.

Previously the commission ordered a flat 5½ per cent annual reduction in depreciation charges against operations on the basis of earnings of invested depreciation funds. The new order leaves the rate open, so that for some companies the figure could be more than 5½ per cent, and less for others, depending upon amounts earned by the invested depreciation accounts. Miss Wilson, Trenton Republican, dissented from the order. She declared it was a "radical and far-reaching departure from the long-established policy of the commission and practices in the industry."

Court Approves Plan

THE Securities and Exchange Commission's plan for reorganization of the Laclede Gas Light Company was approved on August 25th by United States District Judge Rubey M. Hulen in an order enjoining all persons from interference with enforcement of the proposal.

Under the plan, the electric properties of the company would be sold to the Union Electric Company of Missouri for $8,600,000, and bonds of the Laclede Gas Light Company would be retired.

Objections had been registered by the St. Louis Union Trust Company, trustee of the $23,000,000 second mortgage bond issue, and four insurance companies which hold $1,313,000 in bonds. They contended it would be inequitable because the bonds would be retired at face value, without payment of premium.

Nebraska

City Urged to Buy Consumers

BY unanimous vote the committee of 59 recently recommended, first, that the city of Lincoln do not sell or lease its electric distribution system to the Consumers Public Power District and, second, that the city acquire the distribution system of Consumers in the city by negotiation. If negotiations fail, then the committee recommends that it be reconvened.

Since the committee has spoken definitely and in the first instance for unification, it would appear that, if negotiations fail, the group will then take up the question of condemnation. There are but two methods of accomplishing what the committee says should be accomplished: negotiated purchase and condemnation, one or the other.

The report was drawn after seven hearings and bears the signatures of Verne Hedge, chairman, and George L. Towne, secretary.

Consumers Public Power District directors and the 4-man committee recessed their meeting at Columbus on August 22nd without coming to any agreement on the sale of Consumers properties at Lincoln to the city.

R. W. Beck, Consumers consulting engineer, was not in Columbus for the meeting, and Consumers' directors said they were unable to set a price on the property without consulting him. Instead, representatives of both groups agreed to continue negotiations for the sale of the properties, leaving the details to be worked out by Beck and Lincoln city engineer, Dave Erickson.

The two groups were scheduled to meet again when the engineers' report is ready.

At the suggestion of Mayor Marti, the city council, while gathered informally before the regular session on August 21st, voted unanimously in requesting City Attorney Max Kier to prepare and file in supreme court, as friend of the court, a brief in connection with appeal, now pending, by Consumers Public Power District in the Kearney condemnation case. With the city undertaking to acquire the local distribution system from Consumers, councilmen assumed, they said, that the issues involved in the Kearney Case were of direct interest to the citizens of Lincoln.

The constitutionality of the condemnation setup is being attacked by Consumers. It is the contention of the district, as was the case in the Sidney controversy, that the statutory provision relative to condemnation does not comply with the constitutional requirement of due process and just compensation in that it allegedly denies the owner of the property a judicial hearing on the matter of just compensation.

Consumers Reduces Rates

THE Consumers Public Power District last month announced rate reductions, effective on meter readings September 5th, actually accruing to the customer as of August 5th. It is reckoned over the statewide system at a 10 per cent average and is a saving to Lincoln patrons of the district reckoned at $110,000 annually. This, coupled with the city plant's recent 10 per cent reduction, $32,000 saved to its consumers annually, makes a total saving to customers of both systems of $142,000 per year.

John E. Curtis, district manager of Consumers, said that with the $125,000 reduction in June, 1942, total reductions by the district amount to $235,000 annually. That $125,000, he added, has saved Lincoln customers to date more than $400,000.

The over-all saving accomplished through action of the board of directors at Columbus on August 22nd accounts for a system-wide saving, he said, of $415,000 annually and counting the former reduction brings the total rate savings over the system to $869,000 a year. The current cut also reaches all rural patrons of the vicinity.

New Jersey

Rail Tax Sum Released

SCORES of municipalities in thirteen counties will share $10,476,050 released recently by State Controller Homer C. Zink, from the more than $35,000,000 paid by seven railroad companies on their tax delinquencies and for interest penalties. The distribution is based on the amount of second-class railroad property which is located in the municipalities.

Hudson county will receive $8,879,842 with $5,505,356 of this sum going to Jersey City, $1,264,541 to Weehawken, $1,000,100 to Hoboken, and $894,213 to West New York.

Bergen county municipalities will divide $491,767, with $490,394 going to Essex, $165,202 to Passaic, $98,019 to Morris, and $25,335 to Union.

New York

WLB Ruling Stays One-man Busses

THE Fifth Avenue Coach Company's request for one-man operation of its 240 double-decked busses was denied recently by the regional War Labor Board.

The board, however, in the ruling announced by Thomas L. Norton, the chairman, suggested that the company and Local 100 of the Transport Workers Union of America, a Congress of Industrial Organizations affiliate, negotiate for one-man operation and the retirement of conductors and drivers.

The board's action, which ruled on this single issue, was in the form of an interim directive order.

Two other issues, concerning other contractual matters, primarily wages, were scheduled to be acted on later.

The board followed the majority recommendations of a tripartite panel that had held a series of hearings on the case since March. The board's vote was 7 to 2, with two of the three labor members dissenting.

Pennsylvania

Rate Battle Extended

DECLARING the Peoples Natural Gas Company is charging customers $1,500,000 more than the company "is entitled to receive," the city of Pittsburgh recently filed an appeal to the state superior court in a 7-year-old legal fight to force cheaper rates from the company. (See also page 389.)

Two appeals were filed, one by the city law department, the other by Mrs. Katherine Cassidy. The appeals may be argued this fall in Philadelphia, or next spring in Pittsburgh, it was predicted at the law department.

In contending that the company, now owned by the Consolidated Natural Gas Company, is obtaining excessive revenue, Anne X. Alpern, city solicitor, said:

"Under the present rates approved by the public utility commission last February, the Peoples Natural Gas Company probably will earn $2,500,000 a year, whereas for the ten years prior to the company's first increase in 1940, the company earned an average of about one million dollars a year.

"The fact that the company did not complain during all the years it was earning $1,000,000 a year, according to its annual statements filed with the PUC, is strong evidence that such earnings were adequate and not unfair to the company.

"Therefore, the rates now in effect require the customers to pay $1,500,000 more per year than the company is entitled to receive.

"We contend the valuation of $38,900,000 approved by the PUC is grossly excessive, and allows the company to impose exorbitant rates. If the city is successful in its appeal, we hope to bring down the company's rates to those in effect prior to 1940."

Miss Alpern added that "small consumers like Mrs. Cassidy have had their monthly bills increased more than 25 per cent as compared with the bills they received prior to 1940."

The city solicitor described the gas situation in Pittsburgh as one in which customers of Peoples Natural Gas are forced to pay more for their gas than their neighbors across the street who buy from a competing company.

Quit CIO Union

MASS resignations from the CIO Transport Workers' Union, representative of operating employees of the Philadelphia Transportation Company, materialized recently as a new development in the series of labor troubles which early last month led to a city-wide transportation tie-up and restoration of service by the Army.

With the deadline for withdrawal from TWU membership due at midnight under the terms of a contract signed August 9th between the company and the CIO, Andrew Kelly, a trolley pilot and former TWU organizer, appeared at union headquarters with what he said were 1,000 resignations from the union. Kelly said the resignations were signed by men dissatisfied with the manner in which union officials had looked after their interests during the work stoppage, which occurred after eight Negroes were "upgraded" to the rank of motormen.

James J. Fitzsimmons, TWU organizer in charge at the union headquarters, refused to accept the resignations from Kelly, asserting the contract provided resignations, to be valid, must reach the union by registered mail.

Independents Win Vote

AN independent union won an easy victory over CIO forces in a contest for bargaining rights over Duquesne Light Company production and maintenance employees, election results showed recently.

Of 1,530 eligible voters, 1,380 cast ballots, and 806 voted for the Independent Association of Employees of the Duquesne Light Company and Associated Companies. The CIO Utility Workers Organizing Committee received 532, while 30 were for "no union," 5 were void, and 7 were challenged.

By its triumph the independent solidified its hold on bargaining rights for all organized employees of the production and maintenance, office, and guard force workers.

The CIO loses the one Duquesne unit it previously held, the Colfax plant.

South Carolina

Commission Secretary Appointed

THE state public service commission recently appointed Joe Norton Land, Jr., former rate engineer of the electrical utilities division, secretary of the commission to succeed Miss Mary E. Carr, resigned. Mr. Land's appointment was effective August 3rd.

Mr. Land is a native of South Carolina. He was born at Starr, Anderson county, and educated at Furman University and Georgia School of Technology, Atlanta, Georgia. After leaving school he was employed by electrical construction and radio wholesale firms until he was employed as an accountant by the electrical utilities division upon its formation in 1932. Since that time Mr. Land has held accounting, statistical, and rate posts.

Tennessee

TVA to Cut Tax Payments

THE Tennessee Valley Authority last month announced it was cutting down on payments in lieu of taxes to four east Tennessee counties and shortly would file suit against Polk county on the issue—but a Polk official subsequently said he had heard nothing of the reduction or the lawsuit.

A formal TVA statement issued by William C. Fitts, Jr., general counsel, said Bledsoe, Bradley, Hamilton, and Polk counties were "understandably disturbed concerning recent reductions in direct payments made under § 13 of the TVA Act."

"I haven't heard anything of the reduction. TVA officials have not mentioned it to me," County Judge Vance Davis of Polk told *The Knoxville Journal* by long distance.

The TVA Act was amended several years ago when the authority made widespread purchases of private power company properties, taking these holdings out of the tax stream. The amendment provided for payments in lieu of taxes to take up the shock of the lost revenue, particularly to counties such as Polk in which the Tennessee Electric Power Company had two hydroelectric dams and a steam-generating plant as well as extensive acreage.

Fitts' statement of August 22nd was as follows:

"The statute provides that the payments to be made directly to the counties, as distinguished from the payments to be made to the state, must be based upon the county taxes formerly paid upon power property purchased and operated by the TVA. As TVA construes this language, if any property ceases to be operated, the payment to the county must be reduced by an amount representing the taxes previously paid on that particular property."

The statement did not throw any light on what properties the TVA is not operating in the counties in question, or upon the amount it is reducing its payments.

Assistant Trustee Charles Williams, of Polk county, subsequently stated that the reduction would affect that county's budget but little.

The TVA announced it would seek court action in Chattanooga to uphold or deny its interpretation of the TVA statute shifting payments from the counties to the state.

Utah

Commission Refuses Rehearing

REHEARING on sale of Utah Light & Traction Company to Salt Lake City Lines was denied by the state public service commission recently. Commissioners Donald Hacking and William R. McEntire voted against reopening the case, with Commissioner Oscar W. Carlson in favor of the petitioners. (See also page 392.)

L. E. Elggren, representing the Consumers' Welfare League, and Ralph A. Badger, representing a group of Utah Power & Light Company preferred stockholders, contended the sale price—$675,000—was far below the actual value; that no others were invited to bid for the property; and Salt Lake City Lines have contracts with "General Motors, Firestone Tire Company, and the Standard Oil Company of California," which would result in discrimination against local competing merchants.

Attorney Paul E. Ray for Salt Lake City Lines and Attorney Gerald Irvine for Utah Power & Light Company argued that the commission should not reopen the matter.

Virginia

Assessments Increased

VIRGINIA public service corporations will pay general taxes this year of more than $7,531,000, plus certain additional taxes on gross receipts on the basis of final assessments announced recently by the state corporation commission.

The figure represented an increase of $783,000, or 11.6 per cent over the preceding year. An increase of $535,000 in taxes paid by steam railroads, and $120,500 in taxes paid by power companies, accounted for most of the raise. Taxes on steamboat companies were the only ones to show a decline under 1943, it was reported.

The state commission's figures indicated that public service corporations are truly "big business." The taxes which must be paid were figured on a prpoerty assessment of nearly $230,500,000, a net increase of $4,426,000 over 1943.

The commission assessed 48 light and power companies for taxes of more than $1,400,000.

Taxes on 90 telephone companies doing business in Virginia ranged from nothing at all for 21 companies to $461,846 paid by the Chesapeake & Potomac Telephone Company

The Latest Utility Rulings

Formula for Allocating Administrative Overheads To Construction Disapproved

THE Republic Light, Heat & Power Company was required by the New York commission to reverse a charge to its capital account for administrative overheads on a gas compressor station, determined by arbitrary percentage allocations, and to charge the same to Earned Surplus.

The administrative charge had been calculated on a theoretical formula that it "costs as much to administer and supervise a dollar of construction as it does to regulate and manage a dollar of operation."

The allocation of general administrative expenses, including salaries and general expenses of general officers, between construction and operation had been based upon the ratio of each to the total amount of expenditures supervised.

The dictum as to the same cost to administer and supervise a dollar of construction as to regulate and manage a dollar of operation, said Commissioner Burritt, overlooked the obvious fact that it is not dollars that require administration and supervision or regulation and management, but the work actually done. The expenditure of $10,000 for a single standardized piece of equipment, he added, hardly required as much administration and supervision as the expenditure of the same sum for a project involving chiefly labor. He continued in part as follows:

> Admittedly there are differences of opinion between accountants as to how general and administrative overhead expenditures should be charged. In this proceeding we have qualified witnesses expressing opposite opinions. A conservative view would appear to require that such overheads be charged to operating expenses currently, or at least that only incremental overheads—that is, costs over and above those necessary to carry on operations—should be capitalized. The Interstate Commerce Commission does not permit steam railroads to capitalize any part of the salary of general officers and clerks, unless they are engaged exclusively in connection with construction of new road or extensions. The Federal Power Commission and this commission follow a somewhat more liberal rule of permitting some part of the general and administrative expenses to be capitalized. Under this rule a minimum requirement should certainly be that there should be clear proof that the overheads capitalized relate to construction.

Re Republic Light, Heat & Power Co. (Case 10,055).

Commission Refuses to Defy Court on Rate Base Determination

PETITIONS for rehearing in the Peoples Natural Gas Company Case were dismissed by the Pennsylvania commission where in summary, according to the commission, the petitioners asked the commission "(1) to defy the superior court and (2) to provide a new opportunity to introduce evidence which the city failed to present at any of the many hearings held in the cases over a period of several years."

The commission's order in 47 PUR (NS) 385 had been reversed by the superior court, in 51 PUR(NS) 129. Thereafter the commission issued an order accepting a settlement offer by the

company, in 53 PUR(NS) 110. This involved a substantial reduction of rates and the payment of refunds.

The petitioners for rehearing contended that the commission had failed to comply with the superior court decision; that the superior court decision was no longer binding because of the opinion of the Supreme Court in the Hope Natural Gas Company Case; that the Fourteenth Amendment to the Constitution assured to the petitioners rights which had been violated by the commission order; that the petitioners, particularly the city of Pittsburgh, should be afforded an opportunity to present additional evidence; and that the commission's final order had been based upon data furnished ex parte by the company.

The commission could not agree with the proposed interpretation of the superior court opinion as requiring rehearing, and it deemed its final order a full compliance with the court directives.

With respect to the decision in the Hope Natural Gas Company Case, the commission said it must frequently decide doubtful questions of law material to performance of its administrative duties, but it was governed by the principles embodied in specifically applicable decisions of the Pennsylvania courts. The commission continued:

> Even if we disagree with court declarations of the law, we are not at liberty to embark upon juristic expositions at variance with the court holdings. We consider ourselves bound in this instance by the opinion of the superior court, and we have proceeded accordingly. Again, it is to the court rather than to this commission that petitioners must address themselves. However, we may note that the superior court has categorically stated in its opinion in these cases that a change in the viewpoint of the Federal Supreme Court does not alter Pennsylvania law on rate matters, and it has been held that neither a city nor its citizens have any right of property protected in rate cases by the Fourteenth Amendment: Scranton *v.* Public Service Commission (1923) 80 Pa Super Ct 549.

The point raised with reference to reliance upon information submitted ex parte, said the commission, might well induce it to grant a rehearing if the character or accuracy of the data submitted had been in any way controverted. But the reliability of figures as to net additions, depreciation reserve increase, and operating revenues and expenses, taken directly from the utility books and submitted in support of the company's offer of settlement, was not questioned. Rehearing would not, therefore, produce any change.

Commissioner Buchanan, in a dissenting opinion, reviewed the commission's disapproval of reproduction cost as an element in rate making and expressed the belief that the commission should return the record to the superior court without change, either for the purpose of reargument of the law and the facts, and in particular for a further review in the light of the decision in the Hope Natural Gas Company Case, or to permit the court to make its own findings as to the rate base. *Pennsylvania Public Utility Commission v. Peoples Natural Gas Co. (Complaint Docket Nos. 11380, Sub 20 and 12683).*

Telephone Surcharges by Hotels Enjoined

THE district court for the District of Columbia granted an injunction against the imposition of surcharges by hotels, in violation of telephone companies' filed tariffs, on toll or interstate phone calls made by guests. The court's opinion was announced orally from the bench.

The court held that the law and regulations involved in the case were lawful and valid. The court stated that it had jurisdiction of the subject matter of the case and of the parties, and that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules that were made governing the defendant telephone companies and others engaged in the tele-

phone business. Testimony as to the reasonableness of the surcharges was denied consideration on the ground that this was not an issue in the case.

The question of whether the hotels were agents of the telephone company was dealt with by the court, which believed that to be a vital issue. The court said:

> In the opinion of the court the testimony in this case actually fails to show that these hotels are the agents of the telephone company. There was no written agreement to that effect introduced here; there was no oral agreement to that effect introduced here; and there is no testimony, written or oral, from which this court could imply the existence of an agency in the hotels on behalf of or as agent of the telephone company.
>
> In the opinion of this court the hotels are subscribers. They enter into a contract with the telephone company. "You render us such and such service and we will pay you such and such money." They get the bill every month or two and they pay the telephone company—that was the evidence in this case—the amount that they owe them as subscribers for telephone service from the telephone company.
>
> Now that being so, the telephone companies have no control whatever over what these hotels are doing in regard to this surcharge. But they have knowledge of it. At least, if they didn't have knowledge of it before this case came up, they have knowledge of it today. As a matter of fact the testimony shows that they have had knowledge of it for some time because they have discussed the matter and endeavored to make some settlement of it.
>
> So the telephone companies are charged with what the hotels are doing in regard to these surcharges they are making on the bills of their guests, for toll or interstate messages.

Jurisdiction was reserved so that if the hotels refused to obey the order enjoining them from making the surcharges in question, the court could restrain the telephone company from furnishing service to the hotels. *United States v. American Teleph. & Teleg. Co. (Civil Action No. 23189).*

Most Favorable Terms Must Be Sought When Bonds Are Issued

THE New York commission denied approval of a plan for issuance by the Brooklyn Union Gas Company of general mortgage sinking-fund bonds and sinking-fund debentures on the ground that, from correspondence with a financial organization, it appeared that more favorable terms could be obtained than those proposed by the company. Even the proposal of this house, the commission observed, did not have to be accepted unless it was the best bid submitted.

Chairman Maltbie stated the commission's position as follows:

> Although the regulation of the issuance of securities by a gas company has been in operation over thirty-seven years, it may be useful to call attention to certain principles in relation thereto. In the first place, the commission has no authority to authorize the issuance of securities unless it can certify that the issuance of the bonds and debentures is "reasonably required for the purpose specified in the order" and unless it finds that such issuance is in the public interest. It follows that the commission has no authority to approve an issue of bonds at an interest rate higher than is required to produce the necessary funds. In other words, if a 3 per cent bond can be sold at a lower net interest rate than a 4 per cent bond, all other things being equal, the commission is required to withhold its approval of a 4 per cent bond; or if a company proposes to issue bonds in excess of the amount required, approval may not legally be given.
>
> In determining these and other rules in the application of the statutory provision, the commission not only has the power but the duty to consider the entire plan and all of the provisions connected with the issuance of obligations (in the instant case, bonds and debentures) in order to determine whether the proposed issue is proper and necessary.

The commission refused to consent to the issuance of the securities as proposed but stated that it would permit the issuance, subject to the usual terms and conditions which the commission adopts in such cases, of securities on more favorable terms suggested. *Re Brooklyn Union Gas Co. (Case 11598).*

Price for Sale of Gas Transmission Line Held Excessive

THE New York commission disapproved the sale of a pipe line and rights of way by Producers Gas Company to Home Gas Company for a purchase price of $21,038, agreed upon by the companies, where it appeared that this was the price paid for the line over fourteen years ago. The proposed price was said to be more than twice the original cost less estimated accrued depreciation, although it was about one-third of what it would cost to construct a new line. The companies were not affiliated, and the sale was between a willing seller and buyer, and it appeared that the sale and purchase of the line would be mutually advantageous provided the price were reasonable from the standpoint of dollars' effect on customers, and hence on the public interest. Commissioner Burritt said:

> Despite the fact that the line has been neither used nor useful in serving them, Producers has accumulated on its books some $5,890 depreciation against the line by charges to its customers through operating expenses over the 14-year period; nor does it propose to deduct this amount of depreciation from the original cost of the pipe line. Home proposes to charge the $21,038 to its plant account as original cost and presumably to continue to charge to its customers depreciation on the full amount. According to the commission's engineer, the line is about thirty-seven years old and has served about half of its useful life.

It was recommended that the transfer be approved at an amount not exceeding $12,000. *Re Producers Gas Co. et al. (Case No. 11,443).*

Stockholders Appearing Late Are Denied Participation In Acquisition Case

AN application of Salt Lake City Lines and Utah Light & Traction Company for consent and approval of the Utah commission to the acquisition by the former company of the transportation property of the latter was approved, although Commissioner Carlson dissented because preferred stockholders of Utah Power & Light Company had been denied intervention. Utah Power & Light Company is a parent of Utah Light & Traction Company.

The application was filed on April 27, 1944, and came on before the commission on May 18th after due notice to interested parties. The matter was continued to May 31st, on which date further testimony was adduced and the matter submitted to the commission. Petitions in intervention and for further hearing were filed by preferred stockholders of Utah Power & Light Company on June 21st and on June 23rd. The commission concluded that all interested parties had been given ample time and opportunity to present their interest in the matter to the commission and these petitions were denied.

Salt Lake City Lines had been organized under the laws of Utah for the purpose of owning and operating urban transportation systems. Its sole stockholder, except for directors' qualifying shares, would be Pacific City Lines, Inc., a Delaware corporation, which had been organized for the purpose of acquiring, organizing, and developing city transportation systems. It has subsidiaries operating in various western cities.

With respect to the agreed price for the property, reached after arm's-length bargaining, the commission said that owing to abnormal war conditions the years 1942 and 1943 could not be considered indicative of what postwar earnings of the transportation system would be, although the commission did not admit that capitalization of earnings to determine value was appropriate for regulatory purposes. The selling com-

pany had solicited bids for the property from five large interests, but Salt Lake City Lines was the only interested party. The commission thought that there should have been greater publicity, but the seller was not under any statutory compulsion to make widespread publicity of the matter. Whether greater publicity would have produced additional bids of higher amounts was conjectural.

The commission considered the fact that the new owner would not be under local control but would be a wholly owned subsidiary of a foreign corporation. The commission said it had evidenced concern in other cases about foreign holding company control of operating utilities and, as a general policy, was inclined to look with disfavor upon such control. Personal views on this question, however, must be subordinated to conform with the intent of the controlling statute. The statute did not provide for preferential treatment of a company with no holding company affiliation as against one under control of a holding company. Neither did it say that a locally owned company should have preference over a foreign corporation. *Re Salt Lake City Lines et al. (Case No. 2776).*

Commission Disclaims Jurisdiction over Local Motor Passenger Operation under Louisiana Statute

A COMPLAINT by the holder of operating authority against alleged illegal operation by another motor carrier was dismissed by the Louisiana commission for lack of jurisdiction. The question of jurisdiction depended upon the construction of two separate provisions of the act regulating motor carriers.

One paragraph of the act specifically defines the term "common carrier by motor vehicle" and excludes from the definition business conducted exclusively within the corporate limits of an incorporated municipality or within a radius of 7 miles of the limits of an incorporated city, town, or village. Another paragraph exempts from commission jurisdiction the following persons engaged in operating motor vehicles located, operated, and employed mainly within the corporate limits of an incorporated municipality and not more than a distance of 7 miles therefrom: (a) taxicabs of not more than 6-passenger capacity and not operated over a regular route or between fixed termini, (b) sight-seeing passenger vehicles, (c) trucks or property-carrying vehicles.

It was noted that passenger carriers, other than sight-seeing vehicles and taxicabs, were not specifically named in this exemption, but the commission said that it must attempt to interpret the requirement of the act to arrive at a clear understanding of its functions and duties, and, in interpreting the act, it must accept the act as a whole, as an integrated expression of the legislative will. It must not divorce any particular clause or paragraph from its context. The commission continued:

> Pursuant to this policy the commission must consider Paragraph (j) of § 2 in connection with Clause 13 of § 3. The first declares that no motor carrier operating solely within the 7-mile zone is to be regarded as a common carrier within the contemplation of the act, whether he be a carrier of persons or of property. The second lists certain carriers operating exclusively within that zone which are to be exempt from the act, but omits mention of passenger bus lines.
>
> If the omission of passenger bus lines from Clause 13 of § 3 be accepted as controlling, then the exception carried in the definition in Paragraph (j) of § 2 becomes superfluous, for property-carrying vehicles within the zone are exempted by § 3; and, had the legislative intent been to exempt only the property-carrying vehicles operating within the zone, the exception carried in Paragraph (j) of § 2 should have been omitted, for its language is adverse to that intention. It is a long-established rule of law that, in construing statutes, effect must be given if possible to every clause contained in the statute; and, in the opinion of this commission, the only way in which effect can be given to both clauses under discussion here is to conclude that the commission has

no jurisdiction over any motor carrier for hire, either of passengers or of property, whose operations are exclusively within an incorporated municipality and/or a radius of 7 miles of the corporate limits thereof. *Porter v. O'Neal (Order No. 3067, No. 3961).*

Other Important Rulings

THE Massachusetts Department of Public Utilities terminated an investigation of a water supply to seasonal customers of a company operating mostly in private ways and purchasing its water from a town, upon a showing that the company could continue operations only at a loss, that because of unpaid charges for water previously furnished by the town it could not obtain a supply, and that any order by the department under these conditions would be futile. *Re Nutting's Water Co. (DPU 7060).*

The Wisconsin commission held that it is discriminatory to render business telephone service at residence rates. *Re Nasewaupee Telephone Co. (2-U-1972).*

The Washington commission broke precedent by granting permanent common carrier rights to an applicant who conducts other transportation service in the capacity of a private carrier, in view of the need during the war for the fullest possible utilization of all available motor truck equipment and in view of the fact that the applicant's equipment was of the type particularly in demand at this time by contractors on government jobs because of its large carrying capacity, but such authority was limited to the duration of the war and six months thereafter. *Re Romano (Order MV No. 40812, Hearing No. 3224).*

The court of appeals of Kentucky held that the Motor Carrier Act is not unconstitutional in so far as it authorizes the issuance of a certificate conferring exclusive privileges on the grantee. *Wolf et al. v. Cumberland Coach Corp. 181 SW(2d) 51.*

The appellate court of Illinois, third district, held that bus owners operating passenger busses under contract with factory employees, and not offering any service to the public indiscriminately, but confining the service to the employees in transporting them to and from their places of employment, were not operating as public or common carriers or as public utilities who would be required to procure certificates of convenience and necessity from the commission, but were operating as private carriers under specific contractual arrangement with the particular group of employees to whom they furnished such transportation. *Illinois Highway Transportation Co. v. Hantel et al. 55 NE(2d) 710.*

The supreme court of New York held that a motor carrier transporting only air-line passengers and their baggage between an air-line terminal building and the airport, pursuant to a contract with the air-line companies established in the terminal to furnish such service to passengers possessing air travel tickets and reservations, is not engaged in operating an omnibus line within the meaning and intent of the Public Service Law and is not operating as a public or common carrier. *Public Service Commission v. Grand Central Cadillac Renting Corp. 48 NY Supp(2d) 603.*

The Colorado commission believes that the proper test for approval of motor carrier service during wartime is whether the proposed operation is necessary to the war effort or to the maintenance of essential civilian economy. *Re Hardrick (Application No. 6535, Decision No. 22446).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA

Washington Gas Light Company

v.

Public Utilities Commission of District of Columbia et al.

Civil Action No. 22173
55 F Supp 627
June 27, 1944

APPEAL *from order of Commission reducing primary rate of return to be allowed under sliding-scale arrangement; order set aside. For Commission decision, see (1943) 53 PUR (NS) 321.*

Procedure, § 30 — Evidence to support findings.

1. Substantial evidence is required to support the findings of the Commission, and a mere general opinion of the Commission unsupported by findings of fact based on substantial evidence is of no effect, p. 195.

Return, § 26 — Cost of money — Earnings — Price ratios — Evidence.

2. Substitution of 9 per cent as a reasonable allowance for cost of common stock capital, where a Commission witness has testified to 11.68 per cent and company witnesses fixed it at 10.98 per cent, both exclusive of the cost of financing, while the earnings-price ratio of comparable gas companies was 10.54 per cent, is arbitrary, unreasonable, and void and not supported by any substantial evidence, p. 195.

Expenses, § 15 — Disallowance — Lack of evidential support — Legal services.

3. Disallowance of a part of the expense for legal services on the ground of unreasonableness is error where there is no evidence in the record justifying the reduction, p. 196.

This was an appeal from an order of the Commission dated November 8, 1943, 53 PUR(NS) 321, ordering a reduction of $132,896 in the rates charged for gas for the year beginning September 1, 1943. (The Commission's order allowing an increase in rates for the previous year was litigated by the Office of Price Administration. See [1943] 47 PUR(NS) 1, 48 F Supp 703; [1943] — US App DC —, 50 PUR(NS) 33, 137 F(2d) 547; and [1944] 321 US 489, 88 L ed —, 52 PUR(NS) 257, 64 S Ct 731.) The present proceeding related to the annual determination of rates and charges of the company in accordance with the provisions of the sliding scale arrangement established by order of the Commission dated De-

cember 13, 1935, 11 PUR(NS) 469. In addition, the proceeding related to the primary rate of return to be allowed the company under the provisions of that arrangement. At the hearings relating to the primary rate of return, both the Commission's staff and the company's witnesses devoted their attention principally to a study of cost of capital, upon which cost a rate of return might be predicated. Much data and testimony was introduced pertaining to bond yields, yields on preferred stocks, the effective interest rate on long-term debt to the company, and the cost to the company of servicing its preferred stocks. Studies were made of earnings-price ratios and dividend-price ratios predicated upon the history over a number of years of investor interest in the common stock of the company and of other comparable companies. The Commission was of the opinion that the cost-of-capital approach to a determination of a fair rate of return was particularly well adapted to the sliding scale arrangement. As to long-term debt capital, the Commission concluded that "In view of the nature of the debt presently outstanding, . . . the present cost of this type of capital of 4.8 per cent, as developed by the company's witnesses, is fair and reasonable." (53 PUR(NS) at p. 331.) It held that 4.906 per cent as the cost of preferred stock capital was fair and reasonable. As to common stock capital, the company's witness presented evidence relating to the earnings-price ratios applicable to the common stock of the company only. The weighted average earnings-price ratio for the period 1934 to June 30, 1943 arrived at by this witness was 10.967 per cent. He added 12 per cent to cover cost of common stock financing, thus arriving at an aggregate rate of 12.283 per cent to be applied to the common stock equity to determine the cost of this class of capital. The Commission found the addition of this 12 per cent to be unwarranted. The Commission's witness presented data not only for common stock of the company but also for other comparable gas and electric companies. He considered ratios for the period 1939 to June 30, 1943, also the spot date of August 2, 1943. He arrived at a weighted average earnings-price ratio of 10.54 per cent and a weighted average dividend-price ratio of 6.87 per cent for the six gas utilities included in the study, one of which was the present company. For fourteen electric companies considered his corresponding ratios were 7.95 per cent and 6.98 per cent, respectively. The Commission held that while earnings-price ratios and dividend-price ratios must be given considerable weight in establishing an allowance for return on common stock equity consideration must be given also to all other pertinent factors. Considering all factors, the Commission held that an allowance of 9 per cent was fair and reasonable. Treating consumers' deposits and the depreciation reserve as sources of funds, allowances of 3 per cent and 4 per cent, respectively, were made by the Commission. This gave an annual over-all cost of capital of 5.8 per cent. As to the company's argument that a rate of return equal only to the cost of capital is the minimum return below which a regulatory body may not go, the Commission pointed out that the rate base of the company included a sum of over

$800,000 in excess of true invested capital. The Commission concluded that a primary rate of return of 5¾ per cent applied in accordance with the sliding scale arrangement would be fair and reasonable. In view of this reduction of the primary rate of return under the sliding scale arrangement from 6½ per cent to 5¾ per cent, the deduction of all taxes, except excess profits taxes, was allowed. Order set aside.

The memorandum opinion of the court follows in full:

, Bailey, J.:

[1, 2] In Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 276, 51 PUR (NS) 193, 64 S Ct 281, the Supreme Court, in referring to the Natural Gas Act of 1938, said on p. 603: "The rate-making process under the act, i. e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests. Thus we stated in the Natural Gas Pipeline Company Case that 'regulation does not insure that the business shall produce net revenues.' (1942) 315 US 575, 590, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736. But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. Cf. Chicago & G. T. R. Co. v. Wellman (1892) 143 US 339, 345, 346, 36 L ed 176, 12 S Ct 400. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. . . ." And again on page 605, 51 PUR(NS) at p. 202: " . . . Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called 'fair value' rate base. . . ."

Taking as necessary that rates to be valid, not only under that act, but generally, must "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed," there was no substantial evidence before the Commission to support its findings. A mere general opinion of the Commission, unsupported by findings of fact based on substantial evidence, is of no effect.

The question before the Commission was what constitutes a reasonable allowance based on the cost of the common stock capital. By cost of capital is meant interest charges and enough more to attract capital to the company, and to maintain its credit. Both the Commission and the company's witnesses used earning-price ratios as the principal method of ascertaining the investors' appraisal of the return required on the common

stock capital. The Commission's witness found that the investors' appraisal of the return required on the common stock capital of the company was 11.68 per cent and the company's witnesses fixed it at 10.98 per cent, both exclusive of the cost of financing. The earnings-price ratio of the six gas companies to which the Commission's witness testified was 10.54 per cent. In its findings the Commission adopted neither of these facts as the cost of common stock capital. It substituted 9 per cent as a reasonable allowance and amended the sliding-scale order of 1935 so as to reduce the primary rate of return from 6½ per cent to 5¾ per cent.

This allowance of 9 per cent is not supported by any substantial evidence and is arbitrary, unreasonable, and void.

[3] The Commission found that the amount of expenses of the company for legal services was unreasonable and disallowed one-half of the amount. I find no evidence in the record justifying this reduction.

The order of the Commission should be set aside.

MAINE PUBLIC UTILITIES COMMISSION

Re Casco Castle Company

U. 1794
June 28, 1944

PETITION *by water company for authority to discontinue service; denied.*

Commissions, § 30 — Jurisdiction — Constitutionality of statute.

1. The Commission does not have power to set aside acts of the legislature, as the exercise of such power is in its very nature a purely judicial function vested in the court, and the Commission is not a court, p. 199.

Public utilities, § 121 — Status of company furnishing water.

2. A company which, after passage of the Public Utilities Act, continued to own, control, operate, or manage its waterworks and to furnish water to the public for domestic use became a public utility, and by so devoting its property to the public use it assumed all applicable obligations imposed by the act, p. 199.

Service, § 141 — Duty to serve — Lack of charter authorization.

3. A company operating a water utility cannot disclaim any part of its obligations upon the ground that its charter does not authorize the conduct of its public water supply business, p. 199.

Public utilities, § 21 — Tests of status — Charter.

4. The status of a corporation as a public utility depends upon its actual operations, not upon the legal authority of its charter, p. 199.

Service, § 215 — Abandonment — Necessity of authorization.

5. A company which has operated a water system as a public utility cannot divest itself of its public character without the consent of the Commission so long as such consent is not unreasonably or arbitrarily withheld, p. 199.

Service, § 242 — Approval of abandonment — Burden of proof.

6. The burden of proof to justify an abandonment or discontinuance of service is upon a water company petitioning for approval of discontinuance, and detailed, definite, and cogent proof is required, p. 203.

Evidence, § 4 — Judicial notice — Annual reports of companies.

7. The Commission takes judicial notice of data obtained from the annual reports of regulated companies, p. 204.

Service, § 489 — Abandonment — Evidence of income and expense.

8. Evidence relating to past income and expense of a company seeking authority to abandon service is material to the issue only so far as it tends to show the future prospects, p. 207.

Service, § 237 — Abandonment — Operating loss — Period covered.

9. The fact that an operating loss was incurred in one year by a company seeking authority to abandon service is not alone sufficient to determine future prospects, where abnormal expenditures were made in that year, which, if spread over a period of years, would have resulted in avoiding a loss in any one year, particularly where it appears that this was the first year's loss in the entire period under the company's present management, p. 207.

Service, § 237 — Abandonment — Adequacy of return — Period covered.

10. The principle adopted in rate cases that, in determining whether a utility is receiving a reasonable return, a reasonably long period must be taken rather than the result of operation in a single year, is equally applicable in a case relating to approval of service abandonment, p. 207.

Return, § 117 — Water utility — Confiscation.

11. An average return of 5.4 per cent over a period of eleven years and an average of 4.2 per cent over a 12-year period, including the most recent year when abnormal expenditures were made, was held not to be so low as to be confiscatory for a water company so situated that the risk to invested capital was comparatively small, p. 208.

Service, § 239 — Abandonment — Exhaustion of alternative remedies — Rate increase.

12. A water company seeking authority to discontinue its service because of an operating loss must show that it has first exhausted every reasonable effort to operate successfully, and one of the efforts that must be proved is that an attempt to increase rates has been made, or failing that, that any sufficient increase would be unreasonable and prohibitive, p. 208.

APPEARANCES: Charles E. Gurney, Portland, for petitioner; Paul L. Powers, Freeport, for consumers.

By the COMMISSION: This is a petition by Casco Castle Company, a corporation organized under the general laws of the state of Maine, for approval by this Commission under P L 1933, Chap 155, of its proposed discontinuance of a public water supply system and a public water serv-

ice which for many years it has been rendering at South Freeport in the town of Freeport and county of Cumberland in this state.

The petition, bearing date of May 24, 1944, was filed with this Commission the following day, and on May 25th a public hearing was ordered to be held thereon at the town hall in Freeport on June 7, 1944, at 9:30 o'clock in the forenoon, EWT. On the same day, due notice thereof was given by the clerk. Subsequently, at petitioner's request, hearing was continued to June 14, 1944, at the same time and place, when the hearing was held, after due notice of the continuance.

In a recent proceeding involving this company, F. C. #1204, it became necessary for this Commission to investigate and pass upon the condition of petitioner's plant and the adequacy of its public service. After a hearing held at Freeport on May 10, 1944, a decree was issued on May 17, 1944, in which it was found that petitioner's system had been "neglected and allowed to fall into a deplorable condition," and that its service to its customers was inadequate. The company was ordered to "take such steps as may be necessary to repair or replace its source of supply, pumps, tanks, pipes, and other facilities, to enable it to render safe and adequate service to its customers at all times; . . . "

As appears in the decree in that case, Casco Castle Company was originally incorporated primarily for the purpose of operating a summer hotel known as "Casco Castle," and properties connected therewith at South Freeport. Among the properties acquired by the company was the water system, construction of which had been completed September 1, 1912. From that date to the present time this system has constantly been operated to supply the community. The record does not reveal the date of acquisition by the present owner. The first annual report filed with this Commission in the name of Casco Castle Company covered operations for the year 1931. The number of customers is about fifty in the winter and eighty to ninety in the summer.

It appears from the evidence in the present case that on May 23, 1944, six days after the above-mentioned decree was issued, a meeting of petitioner's stockholders voted "That the company cease rendition of further service in supplying water to customers in South Freeport and that such cessation shall date from July 1, 1944"; and also "That the company file petition with the Public Utilities Commission under the law applicable, to be permitted to cease rendition of public service in the supplying of water."

On the following day the superintendent was instructed to terminate service on July 1st in a letter from the treasurer; and under date of June 2, 1944, notices were mailed to each customer informing him of petitioner's intention to discontinue all water service on the first day of July.

The statute under which this petition is brought, P L 1933, Chap 155, reads, so far as applicable to this case, as follows:

"No public utility as defined in this chapter shall abandon all or any part of its plant, property, or system necessary or useful in the performance of

its duties to the public, or discontinue the service which it is rendering to the public by the use of such facilities, without first securing the approval of the Public Utilities Commission. In granting its approval, the Commission may impose such terms, conditions, or requirements as in its judgment are necessary to protect the public interest. Any public utility abandoning all or any part of its plant, property, or system or discontinuing service in pursuance of authority granted by the Commission under the provisions of this section shall be deemed to have waived any and all objections to the terms, conditions, or requirements imposed by the Commission in that regard."

Petitioner appears to base its case upon two contentions, which may be stated as follows:

1. That, upon due notice to its customers, it may lawfully withdraw its property from public use, and discontinue its public service, at any time it chooses, irrespective of whether its water business is profitable or otherwise.

2. That it cannot be compelled to make repairs and carry on its business at a loss.

We shall deal with these contentions in that order.

[1] Counsel for the petitioner in his oral argument took the position that P L 1933, Chap 155, contravenes the Fourteenth Amendment to the Constitution of the United States and is therefore void. Even if the Commission were of that opinion, it does not presume to have the power to set aside acts of the legislature. The exercise of such power is in its very nature a purely judicial function. The judicial power of the state is vested in the supreme judicial court and other "courts" established by the legislature. Constitution of Maine, Art VI, § 1. The Public Utilities Commission is not a "court." Although it may be said to possess certain quasi-judicial powers, "its functions are mainly legislative and administrative, and not judicial." Hamilton v. Caribou Water, Light & P. Co. 121 Me 422, 423, PUR1922E 801, 802, 117 Atl 582.

Under what we conceive to be the established law, and the well-settled practice of this and other state regulatory Commissions, we are bound to presume the validity of legislative enactments, and to be governed by their provisions, unless and until they are repealed or held invalid by courts of appropriate jurisdiction. Public Utilities Commission v. Milo Water Co. (Me) PUR1930C 212; Cincinnati Traction Co. v. Public Utilities Commission, 111 Ohio St 681, PUR1925C 510, 514, 146 NE 84; Re Cochise (Ariz) PUR1915D 220; Re Dalton (Utah) PUR1922E 847, 855; Re Los Angeles (Cal) PUR1916F 593, 629; Re Rochester (NY) PUR1922E 704, 706; Colburn v. Nashua Street R. Co. (NH) PUR1916A 424.

Nevertheless, a consideration of constitutional principles is requisite to a proper interpretation of the act and a proper exercise of the discretion vested in the Commission by its terms.

[2–5] In support of its contention that it may discontinue at will, petitioner relies upon a statement of the Supreme Court of the United States to the effect that one who devotes his property to public use, though sub-

jected thereby to be controlled by the public, "may withdraw his grant by discontinuing the use." Munn v. Illinois (1877) 94 US 113, 126, 24 L ed 77. To this Commission it appears that the quoted language was purely obiter dictum. The court was dealing with the constitutional power to regulate a business in which the property employed was devoted to a public use. The right to discontinue a business so regulated was not in issue. Furthermore, it does not appear in Munn v. Illinois, *supra*, that there was any statutory prohibition of such discontinuance, such as that involved in the instant case.

Petitioner also cites Wolff Packing Co. v. Court of Industrial Relations, 262 US 522, 67 L ed 1103, PUR1923D 746, 43 S Ct 630, 27 ALR 1280, in which a Kansas statute regulating wages and labor conditions in the meat packing and certain other businesses was declared unconstitutional as a deprivation of property without due process of law. The decision rests largely upon interference with the freedom of contract of the owners and freedom of labor of the workers. Although the opinion delivered by Mr. Chief Justice Taft contains, at p. 543 of 262 US, PUR 1923D at p. 758, some general language to the effect that an owner whose business "by mere changed conditions" becomes clothed with a public interest "may stop at will, whether his business be losing or profitable," the facts involved in the case are so entirely different, and the issues before the court so distinct, from those in the instant case, that we do not regard the decision as controlling the point here in issue. Furthermore, this language appears to have been based upon Weems Steamboat Co. v. People's Steamboat Co. (1909) 214 US 345, 53 L ed 1024, 29 S Ct 661, which is cited by the court. But the Weems Case, involving the right of an owner of a wharf to withdraw it from public use, merely held that upon the facts there had been no intent to dedicate and therefore no dedication to the public, and that consequently the public had merely a license which was revocable. Had the property been employed as a public business and actually dedicated to a public use and accepted by the public we think the result would have been otherwise. A gratuitous license is essentially revocable in its nature while a dedication which has been accepted is irrevocable. 18 CJ, Dedication, § 5.

The duty to serve the public may arise from a special franchise, it may be based upon contract, or, as in this case, it may depend upon devotion by the owner of his property to a public service regulated by the state.

When petitioner, or its predecessor, after passage of the public utilities act, continued to own, control, operate, or manage its waterworks and to furnish water to the public for domestic use it became a public utility. R. S. Chap 62, § 15. By so devoting its property to the public use it assumed all applicable obligations imposed by the act. Since the enactment of the regulatory law it has continued for nearly thirty years to perform its public function. It has recognized the fact that it was subject to public regulations by the filing of the reports required of utilities annually by this Commission, as well as by the filing of rate schedules and its rules and regulations.

Casco Castle Company cannot now be heard to disclaim any part of its obligation upon the ground that its charter does not authorize the conduct of its public water supply business.

Whether or not the corporation is a "public utility" as defined in the statute depends upon its actual operations, not upon the legal authority of its charter. By the express language of the statute a "water company," as included in the definition of "public utility," is "every corporation . . . owning, controlling, operating, or managing any waterworks for compensation within this state." Rev Stats Chap 62, § 15. These words make it plain that actual operation, not legal authority, is the criterion; and all the decisions that have come to our attention have so held. Illinois Power & Light Corp. v. Consolidated Coal Co. (1928) 251 Ill App 49; State ex rel. Danciger & Co. v. Public Service Commission, 275 Mo 483, PUR1919A 353, 205 SW 36, 18 ALR 754; Hutchinson v. Pennsylvania Chautauqua (Pa) PUR 1931C 168; Dwight v. Lyon & Hoag (Cal) PUR1919F 519.

The rule is clearly stated by the Illinois court of appeals in Illinois Power & Light Corp. v. Consolidated Coal Co., *supra,* at p. 75 of 251 Ill App:

"If a person or corporation assumes to act as a public utility and exercises the powers thereof, although unlawfully, it will be considered a public utility. If such were not the true rule then the present public policy of this state would be of no force or effect."

The same opinion quotes with approval the following language:

"The appellees have assumed and exercised the powers of a public utility and enjoyed the resulting benefit but have discriminated between applicants for service and selected favored persons and corporations. *It is not their privilege to say that they are absolved from the duties and obligations of a public utility because they have not been lawfully authorized to engage in the business to which such duties and obligations attach.*"

And in 51 CJ, Public Utilities § 4 it is stated that: "While the power possessed by a corporation under its charter or general statutes may be inquired into to determine whether it is authorized to perform a public service, the question whether it is or is not a public utility depends not upon its powers but upon its acts."

Likewise, in Washington ex rel. Stimson Lumber Co. v. Kuykendall, 275 US 207, 72 L ed 241, PUR 1928B, 258, 48 S Ct 41, the United States Supreme Court held that certain towboat owners were "common carriers" within the meaning of a statute of the state of Washington by virtue of the operations they actually conducted. At p. 261 of PUR1928B the court said: "The tariff filed by the Northwestern Towboat Owners Association shows that fifty owners held themselves out as engaged in the business of common carriers, including the towing of logs; and, for that purpose, they devote their towboats to the use of the public. They are common carriers, not because of legislative fiat, but by reason of the character of the business they carry on."

It is thus clear that petitioner is subject to the requirements of the public utilities law. We can perceive

no sound reason to believe that it can divest itself of its public character without the consent of this Commission so long as such consent is not unreasonably or arbitrarily withheld.

A similar statutory requirement was challenged in Cleveland v. East Ohio Gas Co. 34 Ohio App 97, PUR 1929E 29, 170 NE 586, in which the court upheld the constitutionality of an act prohibiting the discontinuance of service without the consent of the Public Utilities Commission.

The court, in an extensive consideration of the question, said at p. 113 of 34 Ohio App, PUR1929E at p. 41: "Can there be any serious objection to any well-minded utility—and it must be remembered that utilities are permitted and created for the purpose of aiding and benefiting the public—can it, I say, be any hardship for the East Ohio Gas Company to file an application with the Public Utilities Commission, setting up its desire, giving notice through the Commission of its desire to withdraw its service? After a hearing, if the Utilities Commission thinks the request should be granted, it has the power, under certain terms and conditions, to grant the withdrawal of service. *If, on the other hand, it finds that such step is not to the best interests of the public, it can refuse the permission,* and I apprehend that in such case the Utilities Commission would have the power to fix what would be a proper rate to give a fair return for the capital invested by the gas company."

In Re Marin Lumber & Supply Co. (Cal) PUR1928B 661, a lumber company assumed the function of supplying water to the general public in the neighborhood. It was held that by so doing it became a public utility, that its property was dedicated to a public use so that it became impressed with the obligations of a public utility, including the duty not to discontinue its service without Commission authority. The company was ordered to repair its system and to render continuous and adequate service.

And, in 43 Amer Jur § 78, p. 621, the law on this subject is set forth as follows:

"In a number of cases the question has arisen whether one having once undertaken to serve the public with some public utility can, in the absence of the consent of the legislature, thereafter abandon the undertaking. The view that a public utility which has once undertaken a public service cannot discontinue that public service at will and is under some duty to the public to continue, especially where it has received public funds or lands, has been stated or adopted generally."

The legislature enacted P L 1933, Chap 155, for the very purpose of preventing a utility, such as the petitioner, from arbitrarily discontinuing its service and leaving its patrons, as in this case, devoid of one of the indispensable necessities of life. It was the legislative intent that such drastic action should not be permitted unless the Commission were first satisfied that some valid ground exists other than a mere desire to quit. It is the duty of this Commission to carry out that intent until subsequent legislative action or judicial decision shall determine to the contrary.

But the petitioner further contends that it has established a valid ground for discontinuance. It says it cannot make the necessary repairs to its

system and continue to operate except at a loss, and that the prayer of the petition must, therefore, be granted.

Petitioner invokes the doctrine that to compel a public utility to operate in the face of a reasonable certainty that future conduct of business will necessarily be at a loss is an unconstitutional deprivation of its property without due process of law, and relies upon such cases as Brooks-Scanlon Co. v. Louisiana R. Commission, 251 US 396, 64 L ed 323, PUR1920C 579, 40 S Ct 183; Bullock v. Florida ex rel. Railroad Commission, 254 US 513, 65 L ed 380, PUR1921B 507, 41 S Ct 193; and Texas R. Commission v. Eastern Texas R. Co. 264 US 79, 68 L ed 569, PUR1924C 407, 44 S Ct 247.

[6] We must examine the evidence to determine whether or not petitioner's case falls within the limits of that doctrine, keeping in mind that the burden of proof to justify an abandonment or discontinuance of service is upon the petitioner. Re Bangor Hydro-Electric Co. (Me) PUR1930D 336; and that detailed, definite, and cogent proof is required. Re Portland R. Co. (Me) PUR 1928E 300, 304.

The sole witness presented by the petitioner was Mr. Herbert M. Tyler, employed as its bookkeeper since November 1, 1943. From the figures furnished by the company in its annual reports to the Commission, and partly read into the record by Mr. Tyler (beginning at page 5) we have the annual revenues, expenses, and net operating income from water operations for each year, 1934 to 1943, inclusive. From the net operating income, and starting with an investment in operating property of $3,182.42 for the year 1934, computed percentages of return on investment for each year were included in Mr. Tyler's testimony. The computations for years subsequent to 1934 were described as "using the same value of the property" which from later testimony appears as the recorded book investment of 1934 adjusted for recorded additions and retirements of subsequent years.

Included in the details of expense items, as explained by Mr. Tyler, were annual charges for depreciation in the following amounts:

Year	Depreciation Charge
1934	$97.17
1935	103.66
1936	103.09
1937	104.01
1938	104.78
1939	103.67
1940	103.67
1941	103.67
1942	103.67
1943	103.67

There were also other charges to expenses in the years 1936, 1938, and 1939 which Mr. Tyler in cross-examination agreed were in effect additional charges to expenses for depreciation. These charges, as listed, were:

1936 Loss on Abandoned Assets	$25.50
1938 Loss on Abandoned Assets	$34.22
1939 Uncollectible Revenues	$126.38

The $126.38 item was found by Mr. Tyler to have been reported as an amortization charge and incorrectly listed by him as Uncollectible Revenues. He also agreed that the $126.38 was a balance of retirement charged to expenses and in the nature of the other charges for loss on abandoned property.

It appears in evidence that Mr.

Tyler made reference to the Casco Castle Company annual accounting reports to this Commission as a source of information for his figures. Those reports are sworn statements of the operating and financial data for each year, taken from the company books. From these reports it appears that the present management dates from 1931 and that the present basis of Investment in Operating Property was set up in the year 1932, when an improved system of accounting was established. It also appears that the first provision for depreciation was made during the year 1933, so that the balance in Depreciation Reserve, which stood at $1,053.28 at the close of 1943, has been created since the year 1932. Furthermore, effective August 28, 1932, substantial increases in water rates were allowed by this Commission.

[7] For these reasons, the following analyses of revenues, expenses and income have been started with the year 1932, two years earlier than the results presented in evidence by the company. The sources of the additional data are the annual reports of which the Commission takes judicial notice in such cases. People ex rel. New York Edison Co. v. Willcox (1912) 207 NY 86, 95, 100 NE 705, 45 LRA(NS) 629; Chicago & N. W. R. Co. v. Railroad Commission (1914) 156 Wis 47, 145 NW 216; Re Central Illinois Light Co. (Ill) PUR1923A 445; Nyack v. Rockland Light & P. Co. (NY) PUR1920A 754.

The operating results from the water business and the net expressed in per cent of return on the Investment in Operating Property appear as set up in Table I.

TABLE I

Water Operating Income as Reported Years 1932 to 1943

Year (a)	Investment in Operating Property (b)	Operating Revenues (c)	Total Expenses (d)	Net Operating Income (e)	Per cent Return on Invest. (f)
1932	$2,473.19	$580.57	$384.60	$195.97	7.9%
1933	2,749.61	803.82	677.50	126.32	4.6%
1934	3,182.42	856.98	713.32	143.66	4.5%
1935	3,182.42	894.50	706.02	188.48	5.9%
1936	3,189.42	873.16	823.15	50.01	1.6%
1937	3,189.42	885.00	638.95	246.05	7.7%
1938	3,363.18	876.00	724.65	151.35	4.5%
1939	3,182.68	861.76	797.54	64.22	2.0%
1940	3,182.68	883.50	740.76	142.74	4.5%
1941	3,182.68	1,020.75	676.60	344.15	10.8%
1942	3,182.68	905.50	735.28	170.22	5.4%
1943	3,361.04	1,040.00	1,248.61	(R)208.61	None
Total 11 Years	34,060.38	9,441.54	7,618.37	1,823.17	
Average Year	3,096.40	958.32	692.58	165.74	5.4%
Total 12 Years	37,421.42	10,481.54	8,866.98	1,614.56	
Average Year	3,118.45	873.46	738.91	134.55	4.2%

(R) Indicates a red figure or deficit for year 1943.

Expenses have fluctuated in total and by items over the period. Classified in accordance with the reports to this Commission, the items and amounts of expense are shown in Table II:

TABLE II

Water Expenses, as Reported Years 1932 to 1943

Year (a)	Operation and Maintenance (b)	Taxes (c)	Depreciation (d)	Uncollectible Revenues (e)	Total Expense (f)
1932	$339.60	$45.00	$.....	$....	$384.60
1933	528.88	33.00	83.62	32.00	677.50
1934	484.40	78.75	97.17	53.00	713.32
1935	550.56	51.80	103.66 103.09	....	706.02
1936	602.13	51.80	*25.50	40.63	823.15
1937	473.94	51.00	104.01	10.00	638.95
1938	512.65	48.00	104.78 *34.22 103.67	25.00	724.65
1939	519.49	48.00	*126.38	....	797.54
1940	490.09	48.00	103.67	99.00	740.76
1941	524.93	48.00	103.67	....	676.60
1942	575.93	55.68	103.67	....	735.28
1943	1,060.11	50.83	103.67	34.00	1,248.61
Total for 11 Years	5,602.60	559.03	1,011.01 *186.10	259.63	7,618.37
Average Year	509.33	50.82	91.91 *16.92	23.60	692.58
Total 12 Years	6,662.71	609.86	1,114.68 *186.10	293.63	8,866.98
Average Year	555.22	50.82	92.89 *15.51	24.47	738.91

* These amounts charged to expenses were reported as Loss in Fixed Assets Abandoned and Amortization, but were the balance of retirements over charges to Depreciation Reserve and in effect additional charges to expenses for depreciation.

Direct charges to Depreciation Reserve on account of retirements of property were limited to small amounts. Therefore, very little use was made of the reserve created by direct depreciation charges to expenses, except as a source of cash for other purposes. The development of the Depreciation Reserve is shown in Tabel III:

TABLE III

Development of Depreciation Reserve Years 1932 to 1943

Year (a)	Annual Chg. to Exp. and Credit to Reserve (b)	Amount for Property Retired (c)	Actual Charge Against Reserve (d)	Balance of Retirement Charged to Exp. (e)	Balance in Reserve at Close of Year (f)
1932	$	$	$	$	$
1933	83.62				83.26
1934	97.17				180.79
1935	103.66				284.45
1936	103.09	30.00	4.50	25.50	383.04
1937	104.01				487.05
1938	104.78	37.00	2.78	34.22	589.05
1939	103.67	180.50	54.12	126.38	638.60
1940	103.67				742.27
1941	103.67				845.94
1942	103.67				949.61
1943	103.67				1,053.28
Total for 11 Years	1,011.01	247.50	61.40	186.10	949.61
Average Year	91.91	22.50	5.58	16.92	86.33
Total 12 Years	1,114.68	247.50	61.40	186.10	1,053.28
Average Year	92.89	20.62	5.12	15.51	87.77

It thus appears that the major portion of the original cost of retired property, over the period of twelve years under the present management, has been taken care of by direct charges to operating expenses and that the portion provided through depreciation charges and created reserve has been so minor that the operating results would not have been greatly reduced if those charges had also been made directly against operating expenses, thus eliminating any necessity for annual depreciation charges.

In accordance with the accounting regulations of this Commission the prescribed function of an annual depreciation charge is to compensate the owners currently for the original cost of the property used up in service to the public and to provide a reserve for accounting for such original cost when the retirement of the property occurs. Whereas, in compliance with such regulations the amount of the reserve is represented by assets in the form of cash, or investments, in this case it appears in evidence (Record p. 19) that the cash assets obtained have been used for other activities of the corporation.

The nonoperating property of the corporation is defined as real estate, or land, in South Freeport, and the accounting reports indicate that the major nonoperating activities of the corporation are the payment of taxes and other small expenses representing carrying charges on land held at a fixed asset of $9,526.81. There is a

minor activity indicated by a nonoperating revenue in a total of $65 over a period of twelve years.

The reported results of the operating and nonoperating activities of the corporation are shown in Table IV:

TABLE IV

Net Income of Corporation Years 1932 to 1943

Year (a)	Net Operating Income Water (b)	Non-Operating Income (c)	Gross Income (d)	Interest Deductions (e)	Other Deductions * (f)	Net Income to Surplus **Deficits (g)
1932	$195.97	$10.00	$205.97	$	$264.17	$58.20
1933	126.32	10.00	136.32		270.60	134.28
1934	143.66	5.00	148.66		276.75	128.09
1935	188.48	5.00	193.48		356.92	163.44
1936	50.01	5.00	55.01		340.04	285.03
1937	246.05	10.00	256.05		467.40	211.35
1938	151.35		151.35	52.47	331.20	232.32
1939	64.22	5.00	69.22		359.67	290.45
1940	142.74	5.00	147.74		319.75	172.01
1941	344.15	5.00	349.15		382.77	33.62
1942	170.22	5.00	175.22	61.16	373.62	259.56
1943	(R) 208.61		(R) 208.61	45.46	341.37	595.44
Total 11 Years	1,823.17	65.00	1,888.17	113.63	3,742.89	1,968.35
Total 12 Years	1,614.56	65.00	1,679.56	159.09	4,084.26	2,563.79

(R) Indicates red figures or deficits for the year 1943.

* Col. (f) These deductions represent taxes and other small expenses on non-operating property.

** Col. (g) Red figures or deficits for all years.

The figures in Table IV explain what has become of the profits from water operation which company witness Tyler stated were taken as "a part of the entire corporation," and of the depreciation reserve assets which he testified were used for other activities of the corporation.

The investment assets in water operating property have increased only $887.85 during the 12-year period. Liabilities of notes payable $931.43 more than offset the net additions to property.

Year 1943	$3,361.04
Year 1932	2,473.19
	$887.85

From the net water earnings of $1,614.56 and the depreciation charges contributing to a reserve balance of $1,053.28, no assets have been created accruing to the benefit of the water property and the water customers.

[8–10] The evidence presented relating to past income and expense is material to the issue only so far as it tends to show the future prospects. The question is whether there is a reasonable certainty that this company's water operations cannot hereafter be successfully carried on. The fact that a loss was incurred in the one year 1943 is not alone sufficient to determine future prospects. Abnormal expenditures were made in 1943. Had they been spread over a period of years there would have been no loss in any one year. There is no evidence that future operating expenses would approach the 1943 figure.

The mere fact that there has been

a loss in the past year is not sufficient to establish petitioner's right to discontinue, when it appears that this was the first year's loss in the entire period under the company's present management. Re Columbia R. Gas & E. Co. (SC) PUR1927D 684. In determining whether a utility is receiving a reasonable return in a rate case, a reasonably long period must be taken rather than the result of operation in a single year. Belleville v. East St. Louis & S. R. Co. (Ill) PUR1919E 916, 923. The same principle is equally applicable here.

[11] From Table I, *supra*, after a liberal allowance for depreciation which money was largely appropriated for nonoperating purposes, we find that the average return on the water investment for the eleven years preceding 1943 was 5.4 per cent, and that the average for the twelve years, including 1943, was 4.2 per cent. For a water company so situated as Casco Castle Company, in which the risk to the invested capital is comparatively small, this average return for the twelve year period cannot be said to be so low as to be confiscatory; nor has petitioner presented any evidence to show that it is. Such a company, required to operate at such a return, is not thereby deprived of its property without due process.

Although petitioner claims that it cannot meet the expense of necessary repairs to enable it to render adequate service, it has made no survey to ascertain what repairs must be made or how much expense would be involved. It offers no evidence whatever upon which this Commission could find that such expense would be prohibitive in amount.

If expenditures made upon nonoperating property from depreciation accruals had been used for upkeep of petitioner's water plant, perhaps little or no outlay would now be required. Or if these funds were now available they might suffice. These circumstances do not assist the company in sustaining its burden of proof.

In a similar case the Oxford Electric Company operated both electric service and a street railway. It had maintained no depreciation reserve for the street railway but had placed some $20,000 therefrom into the electric property which, if available, could have been used toward rehabilitation of the street railway. After indicating that fact this Commission refused to allow abandonment of the railway system. Re Oxford Electric Co. (Me) PUR1920A 852.

[12] Furthermore, we think the authorities establish beyond question that even if petitioner had shown a loss for a sufficient period, in order to warrant discontinuance it would still have to show that it has first exhausted every reasonable effort to operate successfully. Re Muncie Electric Light Co. (Ind) PUR1918B 194; Re Durango R. & Realty Co. (Colo) PUR1920B 505; Re Bellingham Teleph. Co. (Minn) PUR1920B 941; Comly v. Goodstein (Colo) PUR 1931E 31; Re Seashore Gas Co. (NJ) PUR1918A 871; Re Kampsville Electric Light & P. Co. (Ill) PUR1920F 133, 136.

Not only has petitioner failed to show such action; it has affirmatively proved the contrary. The company's sole witness testified as follows:

Q. To your knowledge, Mr. Tyler, has anything been done since you have

been employed by the company, your employment by the company, to ascertain what the trouble with this system is?

A. No, sir.

Q. So that in your experience, activities as bookkeeper of this company's affairs, you don't know what it would cost to comply with the Commission's decree?

A. No, sir.

. . . .

Q. To your knowledge, was any discussion had or action taken by the members and officers of the company, to do anything to change the operating basis in order to eliminate the loss which appeared in 1943?

A. No.

Q. Nothing was done? In your experience with the company, this thing has been pretty much neglected, hasn't it, Mr. Tyler?

A. In years past; yes, sir.

Q. Very much neglected?

A. Possibly.

The evidence fails to convince us that every reasonable effort has been exhausted.

Moreover, one of the efforts that must be proved is that an attempt to increase rates has been made, or failing that, that any sufficient increase would be unreasonable and prohibitive. If such facts are not proved a utility is not entitled to discontinue its service on the ground of operating at a loss. Wiesehan v. Zionsville Water & Electric Light Co. (Ind) PUR 1922C 863; Devon Park Hotel Corp. v. Hunter (Pa) PUR1928B 624; Re Muncie Electric Light Co. *supra;* Comly v. Goodstein, *supra;* Re Bellingham Teleph. Co. *supra;* Re Montpelier Utilities Co. (Ind) PUR1923E 513, 517; Priest v. Parkhill (Cal) PUR1926D 37, 41; Re Seashore Gas Co. *supra;* Re Denman (Idaho) PUR 1928C 672, 674; Re Kampsville Electric Light & P. Co. *supra.*

In Re Montpelier Utilities Co. *ubi supra,* at p. 517 of PUR1923E, the Indiana Public Service Commission says: "The question of the abandonment of the plant and service of a utility is always one of extreme importance, but in the case of a water utility its importance is greatly enhanced. Various Commissions have ruled on this subject and all agree that abandonment should not be permitted until an increase in rates has been tried."

In Comly v. Goodstein, *ubi supra,* the Colorado Public Utilities Commission says at p. 34 of PUR1931E:

"Even if the proof showed in this case that service were being rendered at a loss, we do not believe a case has been made warranting authority to abandon. The reason for our conclusion is that before abandonment may be made, a utility must show that it is impossible to avoid a loss, or, possibly, impossible to earn a reasonable return, under any reasonable conditions and circumstances.

" . . . The utility might make a reasonable increase in rates, and make all reasonable efforts to procure more customers, and do whatever else might be reasonable and necessary to put the operation on a reasonably remunerative basis. . . . It is the opinion of the Commission that a case for abandonment has not been made by showing merely that the rates now charged

the consumers have not resulted in what is considered a sufficiently high profit to the utility."

The evidence does not indicate that Casco Castle Company has given any consideration to its rates since 1932, or that it has filed any new schedule or complaint for an increase with this Commission since that date. Mr. Tyler, the company's only witness, testified that to his knowledge there has been no such filing; and none is revealed by the Commission records.

Upon the evidence we are led to believe that revenues have in the past been adequate; and the company has evidently so regarded them.

Depreciation charges over the past twelve years total approximately 33⅓ per cent of the entire investment in water property. Had these funds been used for maintenance instead of for purposes apart from its water business, petitioner would not now be faced with extraordinary expense for reconstruction.

After full consideration of all evidence presented, it is our conclusion that petitioner has failed to sustain its burden of proof. Sufficient reason for us to approve the proposed discontinuance has not been shown.

Therefore, it is *ordered, adjudged,* and *decreed*

That the petition be, and hereby is, denied.

FLORIDA SUPREME COURT, DIVISION A

Frank E. Cooper et al.

v.

Tampa Electric Company

— Fla —, 17 So(2d) 785
May 5, 1944; rehearing denied May 22, 1944

APPLICATION *for certiorari to review interlocutory decree of Circuit Court granting motion of electric company to dismiss amended bill of complaint in action alleging discrimination; granted as to question of discrimination and judgment to dismiss quashed, and in all other respects petition denied.*

Discrimination, § 37 — Rates — Differences based on municipal boundaries.

1. The mere fact that customers outside a city are charged different rates for service from those inside the city is no showing of discrimination, p. 212.

Discrimination, § 14 — Rates — When prescribed by utility.

2. Rates prescribed by an electric company in the absence of rate regulation are in the same category as rates promulgated by a legislative commission, and they may be assaulted on the ground of discrimination or unreasonableness, p. 212.

Rates, § 6 — Powers of court.

3. The court has no power to prescribe a rate to be charged in the future, as that is a legislative prerogative, p. 212.

Reparation, § 15 — Grounds — Discrimination — Long-continued rates.

4. Restitution for alleged excess charges previously paid cannot be required when there is no sufficient showing as to how long the alleged excess charges have been paid, why relief from them has not been sought sooner, what the discrimination is predicated on, nor sufficient factual basis in other respects to prove and support a decree on that point, when it appears that the company has been in existence many years, has materially enlarged its facilities, and has paid dividends to its stockholders, p. 213.

Discrimination, § 7 — Jurisdiction of court — Absence of legislative regulation — Constitutional requirements.

5. A customer complaining of discrimination in rates may obtain relief from the courts when the legislature has failed to exercise its constitutional authority to pass laws for the correction of abuses and to prevent unjust discrimination, in view of the requirements of the Declaration of Rights that all courts in the state be open so that any person may have a remedy by due course of law for any injury done him in his lands, goods, person, or reputation, p. 213.

Reparation, § 23 — Discrimination as basis — Diligent prosecution.

6. A claim by a customer of an electric company for restitution requires a much stronger showing than a charge based solely on discrimination, where the question of discrimination has not before been raised against a public service corporation that has been in operation for a long time; there must be play somewhere for the rule of diligence and when not exercised such claims must be barred, p. 213.

Discrimination, § 37 — Rates — Fair return on property — Comparative costs — Municipal boundaries.

7. A court, in passing upon a claim of discrimination because of higher rates outside of a city than inside the city, must consider fair return on the cost of the property employed and comparative cost of production and delivery to customers inside and outside the city, p. 214.

Valuation, § 21 — Rate base determination — Court decisions — Prudent investment.

8. Supreme Court decisions approving prudent investment as a means of determining a rate base for natural gas companies may shed some light on a case involving differing rates for electric service inside and outside of a city but are not conclusive because they have to do with a reasonable rate of charge for natural gas wherein the criteria for determination are in material respects different, p. 214.

APPEARANCES: Mabry, Reaves, Carlton & White, Paull E. Dixon, and Nathan R. Graham, all of Tampa, for petitioners; Knight & Thompson, of Tampa, for respondents.

TERRELL, J.: This is an application for certiorari under Rule 34 to review an interlocutory decree of the circuit court granting a motion of respondent to dismiss the second amended bill of complaint filed in conformity with this court's opinion, same styled cause reported (1943) in — Fla —, 14 So (2d) 388.

The second amended bill of com-

plaint prays (1) that Tampa Electric Company be restrained temporarily and permanently from charging complainants and those in like situation, they being residents and customers outside the city of Tampa, a higher rate for electric energy than it charges customers residing within the city, (2) that the court ascertain and decree what a reasonable rate would be for customers outside the city, (3) that defendant be required to permit the plaintiff to examine its books to secure such information as may be pertinent to this litigation, and (4) that defendant be required to account and restore to the plaintiffs and those in like situation all sums charged in excess of what the court finds to be a reasonable rate to be charged.

In our former consideration and disposition of the case we held that the legislature was clothed with power to prescribe rates that a public utility may charge for its service but that if it fails in this, any one affected thereby may seek relief under the common law. If it prescribes directly or indirectly through a Commission a rate that is arbitrary or discriminatory, those affected may seek relief through the courts who are authorized to determine a reasonable rate to be charged. We also held that the allegations of the bill charging discrimination were insufficient.

The chancellor granted the motion to dismiss the amended bill of complaint in the present case because he considered it deficient in allegations to show discrimination. Petitioners contend that this order was erroneous and rely on Louisville & N. R. Co. v. Garrett (1913) 231 US 298, 58 L ed 229, 34 S Ct 48; Prentis v. Atlantic Coast Line Co. (1908) 211 US 210, 53 L ed 150, 29 S Ct 67; Reagan v. Farmers' Loan & Trust Co. (1894) 154 US 362, 38 L ed 1014, 14 S Ct 1047; Florida v. United States (1934) 11 F Supp 36, and like cases to support their contention.

[1] These cases have to do with rates fixed by a Commission under legislative authority. In the case at bar, the rates complained of were fixed by respondent and the complaint appears to be that as between customers living inside and outside the municipality, the rates are discriminatory. The mere fact that customers outside the city are charged different rates for service from those inside the city is no showing of discrimination. There must be positive allegations of fact on which to base this charge.

[2, 3] The cases relied on by petitioners support the theory well settled in this country that the power to prescribe rates for public utility service is a legislative prerogative which may be done directly or through a Commission empowered to do so. The courts may relieve against unreasonable or discriminatory rates prescribed by the legislature or the Commission.

The rates complained of here having been prescribed by the Tampa Electric Company are in the same category as rates promulgated by a legislative commission. That is to say, they may be assaulted on the ground of discrimination or unreasonableness. We do not think, however, that the court has power to prescribe a rate to be charged in the future. This seems to be a legislative prerogative. If on final hearing it should be determined that the rates being charged are discriminatory, respondent would for the

present at least be required to put in effect the rate found to be reasonable. Section 30, Art XVI and § 4, Declaration of Rights, Constitution of Florida.

[4] On the point of requiring restitution for alleged excess charges previously paid, we do not hold that this could not be done in a proper case but we do hold that the bill here does not make such a case. There is no sufficient showing as to how long the alleged excess charges have been paid, why relief from them has not been sought sooner, what the discrimination is predicated on, nor is there sufficient factual basis in other respects to prove and support a decree on this point. The Tampa Electric Company has been in existence many years, has materially enlarged its facilities, has paid dividends to its stockholders and there is no showing as to what period restitution is sought.

[5] This leaves nothing but the question of discrimination as between customers inside and outside the municipality. In our former consideration we held that § 4 of the Declaration of Rights should be read with § 30 of Art XVI of the Constitution to give a right of action in a situation like this.

Section 30 of Art XVI of the Constitution authorizes the legislature to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons or corporations engaged as common carriers in transporting persons and property or performing other services of a public nature. Section 4 of the Declaration of Rights requires that all courts in this state be open so that any person may have a remedy by due course of law for any injury done him in his lands, goods, person, or reputation. It appears that in so far as the respondent is concerned, the legislature has taken no step to regulate rate charges by it so there is nobody to which petitioners can take their grievance except respondents or the courts. There must be a tribunal for those aggrieved to take their controversies and we think that in view of the legislature having failed to provide recourse as authorized by § 30 of Art XVI, they must have relief under § 4 of the Declaration of Rights.

Any other holding would be an admission that the government is powerless to or has failed to provide recourse where a ground for it is alleged. We do not think § 4 of the Declaration of Rights authorizes the courts to invade a legislative prerogative granted under § 30 of Art XVI. In other words, the means for relief provided by the legislature must be pursued when they are available. The courts may determine the validity or reasonableness of their findings. On the sole question of discrimination as between customers inside and outside the city, we hold the allegations of the bill to be sufficient but for the reasons stated, it is bad in other respects.

[6] When the question of discrimination has not before been raised against a public service corporation that has been in operation for more than a generation, constantly enlarging and modernizing its plant, distributing dividends, and building up a surplus for contingencies to warrant any claim for restitution in the manner sought here requires a much stronger showing than a charge based solely on discrimination. There must

be play somewhere for the rule of diligence and when not exercised such claims must be barred.

[7] The matter of fixing rates in a case like this being subject to legislative control, the legislature is bound by no standard except the constitutional requirement of due process and the inhibition against taking private property for public use without just compensation. The rate must in all cases be just and reasonable as measured by correct standards that bear a proper relation to the factors involved in the production. If delegated to a Commission or others duly authorized, some standard should be prescribed that will permit a fair return on the cost of the property employed. Such is the criteria that the court below must be governed by in reaching his judgment as to the question of discrimination. There will also be involved the comparative cost of production and delivery to customers inside and outside the city.

[8] In Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 64 S Ct 281, the Supreme Court of the United States approved what is known as the "prudent investment" method as a means of determining a rate base that would allow a fair return on the cost of production. See also Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736. These cases also discuss the "reproduction cost" and other theories and may shed some light on the instant case, but they are not conclusive because they both have to do with a reasonable rate of charge for natural gas wherein the criteria for determination are in material respects different.

It follows that as to the question of discrimination, the petition for certiorari is granted and the judgment to dismiss is quashed. In all other respects, the petition for certiorari is denied.

It is so *ordered.*

Buford, C.J., and Chapman and Adams, JJ., concur.

CALIFORNIA RAILROAD COMMISSION

Re Market Street Railway Company

Decision No. 36821, Case No. 4680
January 12, 1944

PETITION *for rehearing of Commission action reducing street railway fares; rehearing denied. For court affirmance of order, see post, p. 232.*

Rates, § 504 — Transit company — Evidence — Testimony as to passengers and car hours.

1. Evidence of the number of passengers carried by a transit company and of the actual number of car hours operated should be considered in passing upon rates, p. 220.

Rates, § 130 — Rate reduction — Adequacy of service — Basis for Commission action.

2. The Commission acted reasonably in reducing a transit company's rate and acted upon substantial evidence, where the extent, character, and quality of the company's service at the time of the Commission investigation were referred to in the Commission's decision, and where findings were made with respect thereto, p. 221.

Rates, § 32 — Commission powers — Exercise of discretion.

3. The Commission, in passing upon the reasonableness of rates, is not limited to arithmetical computations but may exercise its judgment on the basis of the record before it, p. 221.

Rates, § 159 — Reasonableness — Effect of fare increase — Rate reduction.

4. The Commission acted reasonably in reducing street railway rates where it based its conclusions on the operating and financial results of fare increases and not on mere theory, the record showing the company's actual experience, p. 221.

Valuation, § 37 — Measures of value — Sale offer.

5. A street railway company which has twice offered its property for sale at a certain figure cannot successfully contend that that figure does not represent the fair value of its property for rate-making purposes, p. 225.

Valuation, § 406 — Evidence — Payment of indebtedness — Failure to replace depreciated equipment.

6. That a street railway company paid its interest and sinking-fund charges in part out of its depreciation reserve, instead of making necessary replacements of depreciated equipment, is not relevant in determining the fair value of the company's property for rate-making purposes, p. 227.

Revenues, § 2 — Propriety of estimates.

7. The Commission, in estimating the operating results of a street railway company for the year 1943 under existing rates with reference to traffic, revenue, expenses, and net return, properly considered the actual operating figures for eight months of the year and properly made assumptions for the remaining four months, and properly concluded that the remaining months of 1943, with no change of fare and no material change in service, would follow the established trend as evidenced in the record, p. 227.

APPEARANCES: Cyril Appel, Ivores R. Dains, and Samuel Kahn, for the Market Street Railway Company; Angelo J. Rossi, Mayor, John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul Beck, for the city of San Francisco; Mrs. Helen Negrin, in propria persona:

Additional Appearances on Petition for Rehearing: Felix T. Smith and Henry G. Hayes, for Market Street Railway Company; Douglas Brookman, for Congress of Industrial Organizations (CIO), and George Wilson, President of CIO.

By the COMMISSION: Petition for rehearing of the Commission's Decision No. 36739 rendered November 30, 1943, was filed by the company on December 9, 1943. On December 15, 1943, we made our order granting oral argument before the Commission en

banc and extending the effective date of decision No. 36739 until further order by the Commission. Argument was heard on December 21 and 22, 1943, Mr. Felix Smith arguing for the company, Mr. Dion R. Holm for the city and county of San Francisco, and Mr. Douglas Brookman for the Congress of Industrial Organizations, which has in excess of 35,000 members in San Francisco, who with their families constitute a very substantial group of riders on the street railway system of the company. Permission was granted to representatives of various organizations and to individuals present at the hearing to express their views on the matter before us.[1]

According to its petition the company seeks a rehearing on the following grounds:

(1) that due process of law has been denied the company "in that the Commission has ordered the company to reduce its rates or fares without giving notice that it was being charged with the maintenance of rates that were unreasonably high, or in any other respect unlawful, and without according a fair and complete hearing upon that issue";

(2) that the Commission "has acted arbitrarily and capriciously, in that it has ordered a reduction in the company's rates without having any substantial evidence before it that the rates now charged are in any respect unreasonable";

(3) that the Commission's order reducing the company's rates from 7 cents to 6 cents "amounts to a taking of its property without compensation and the confiscation of its property."

In general, our order is alleged to be in violation of the Constitution of the state of California and of the Fourteenth Amendment to the Constitution of the United States.

These three allegations are subdivided and elaborated in the petition for rehearing and it is the purpose of this decision to consider them on the basis of the present record in some detail.

The Company Did Have Notice That the Reasonableness of Its Street Railway Fares Were at Issue in This Proceeding and Was Accorded a Fair and Complete Hearing upon That Issue.

The petition alleges that "At no time during the hearing was any statement made by the Commission which would put the company upon notice that the reasonableness of its rates was an issue or that it must be prepared to meet that issue." This is an astounding statement in view of the record and is completely contradicted by the nature, scope, and course of the present proceeding. The title of the proceeding, the text of our order institut-

[1] Dr. L. W. Hosford, President of Jefferson Lafayette Improvement Club et al.; Mrs. Gertrude Lincoln, for Women's Welfare League et al.; Eugene E. Pfaeffle, President of San Francisco Retailers' Protective Association; George W. Gearhard, Secretary of Civic League of Improvement Clubs and Associations of San Francisco; J. F. Calverley, President of Southern Council of Civic Clubs; Mrs. Sulvina Ratto, Financial Secretary of Central Mission Improvement Association; Adolph Petry, Chairman of Transportation and Traffic Committee of the Central Council of Civic Clubs; Erwin C. Easton, Attorney for North Central Improvement Association; Mrs. Rose Walker, President of Greater Mission Improvement Association; R. J. O'Rourke, President of San Francisco Property Owners' League; Lloyd Taylor, Executive Secretary of Market Street Association.

ing this investigation on the Commission's own motion,[2] the opening statement of the presiding Commissioner on May 10, 1943, the first day of the hearing,[3] all gave clear, definite, and unmistakable notice to the company that the reasonableness of its rates and charges, as well as its service and facilities, would be investigated by the Commission. We proceeded with this case in method and in form exactly as in other similar proceedings involving rates and service of transportation and other utilities.[4] It may be said that this form of procedure in rate and service cases brought upon the Commission's own motion, has over a period of more than thirty years been a regularly established and recognized practice of this Commission. This same practice is regularly followed by other state and Federal commissions.

The company's management and its counsel understood that this was a rate as well as a service investigation and recognized that service and rates were inseparable and interdependent and must necessarily be considered together. Mr. Kahn, the company's president, appearing as the company's first witness, testified from a prepared statement, commenced his testimony with a review of the rate situation since 1937 when the 5-cent fare was in effect. He reviewed several rate changes authorized by the Commission and their effect upon the company's traffic, revenue, and service. He similarly reviewed the company's experience with the 7-cent fare and introduced company's Exhibit No. 22, estimating what income in his opinion a 5-cent fare would have produced during certain periods in the years 1937, 1938, and 1939. Mr. Kahn's testimony was in fact addressed principally to the matter of rates and to the revenues produced by various rate structures.

Mr. Appel, company's counsel, through Mr. Kahn introduced in evidence company's Exhibit Nos. 24 and 25, which are this Commission's Decisions Nos. 31472 and 31603, respectively, in Application No. 21115. That application was made by the company in 1938 for an order of this Commis-

[2] The first two paragraphs of the order instituting investigation read as follows:

"The Commission believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing,

"It is *ordered* that an investigation be and hereby is instituted upon the Commission's own motion into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service, and facilities of said company."

[3] *"Commissioner Havenner:* The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the reasonableness of the rates and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company."

[4] Among proceedings on the Commission's own motion into the reasonableness of rates and service have been the following: Case 4688, Re Vallejo Electric Light & P. Co. (current proceeding); Case 4672, Re Vallejo Bus Co (1943) Decision 36242; Case 4612, Re Bay Cities Transit Co. (1942) Decision 36042; Cases 4621-2, Re Pacific Gas & E. Co. (1942) (gas service), Decision 36082; Case 4478, Re Interurban Electric R. Co., Key System, Re East Bay Transit Co. (1940) 43 Cal RCR 181; Case 4461, Re Pacific Electric R. Co., Re Los Angeles R. Corp., Re Los Angeles Motor Coach Co. (dismissed by Decision 36338); Cases 3477, 3604, Re Southern California Teleph. Co. (1934) 39 Cal RCR 164; Case 3153, San Diego v. San Diego Consol. Gas & E. Co. (1935) 39 Cal RCR 261, 7 PUR(NS) 443; Case 3008, California Farm Bureau Federation v. San Joaquin Light & P. Corp. 37 Cal RCR 530, PUR1932D 310; Case 3424, Re Pacific Gas & E. Co. (natural gas) (1933) 39 Cal RCR 49.

sion "authorizing emergency increases in certain fares" and the decisions referred to, granting experimental increases, are rate decisions. Decision No. 31472, rendered on November 23, 1938, and reported in 41 Cal RCR 651, reviewed the prior rate Decisions Nos. 29889 (40 Cal RCR 525, 20 PUR(NS) 278) and 30849 41 Cal RCR 349 theretofore rendered in the same proceedings and stated, at p. 652: "In Decisions Nos. 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory." [5]

It must be remembered that the decisions referred to were made in compliance with the company's application to authorize "emergency increases in certain fares." The company, under the rules of the Commission, has regularly filed revenue and operating statistics and the Commission has continually kept abreast of the results of the fare changes. In a real sense, therefore, this has been and is now a continuing rate investigation. The Commission's order in the present case is made on that basis and provides for the regular filing with the Commission of future monthly traffic, revenue, and service statements and provides further "that this proceeding shall remain open for further investigation by the Commission." In fact, all of the proceedings involving the reasonableness of the fares of Market Street Railway Company, including the present proceeding, have been kept open and tentative rates established subject to readjustment from time to time as the results of experience may require. We shall again refer to this policy of fixing rates for public utilities. It must be obvious, however, that this policy of establishing tentative rates subject to readjustment as the results of experience may require, which policy is now generally followed by regulatory bodies, best serves the interests of the public as well as the utility, and assures the fairest results to both.

This record is voluminous on the subject of rates and fares. Mr. Hunter, the Commission's chief engineer, in his testimony relating to fares compared the company's fares with the average streetcar fares throughout the United States and said that San Francisco's average length of haul is

[5] In Decision No. 29889, 40 Cal RCR 525, the first decision in Application No. 21115, 20 PUR(NS) 278, 283, the Commission said:

"In reviewing this record, the Commission is not convinced that applicant's proposed fare structure is one which best meets the situation, in fact the president of the company has stated that no consideration has been given to any other form of fare; that the estimates were of necessity only a guess; and that experience alone could tell what results would obtain if the proposed fare structure were put into effect.

"The Commission has given considerable thought to the matter of selecting a fare structure which will result in the least disturbance of traffic and at the same time provide the needed revenue in the most equitable manner. In our search for such a fare structure we have given consideration to applicant's plan, and have likewise given consideration to a number of forms of fare, such as a straight 6-cent cash fare, zone fares, and the existing 5-cent fare in combination with a 2-cent charge for a transfer.

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

among the lowest in the country, producing a higher fare per mile of travel. He also testified to the relationship of fares to service. Witness Mors, the Commission's transportation research engineer, testified to the company's rate history and in Commission's Exhibit No. 10 extensively reviewed the results of the company's operations from 1922 to 1942. This exhibit contains the company's rate history, and analysis of fare structures comparing the effect of the single cash fares with the so-called token fares, the effect of fare changes on operating revenue, and the revenue and passenger trends under various fare structures up to and including a portion of the year 1943. Mr. Cahill, manager of Public Utilities of San Francisco, testified that the San Francisco Public Utilities Commission strongly advocates a uniform 5-cent fare and universal transfer and that there should be no charge for transfers and that they would not be worth as much as one cent. With respect to the effect of fare increases of 1937–1938, Witness Hunter testified to the fare passengers and passenger revenues of Market Street and Municipal railways for the years 1933 to 1943. Witness Mors on the same subject testified regarding the effect upon operating revenue of a 2-cent transfer charge and the sale of tokens. Mr. Kahn testified on the loss of his company's traffic to Municipal Railway after the company fare was increased above the 5-cent rate. The record is voluminous with respect to trends of earnings on the various fares and the effect of the fare changes on the company's net income.

This brief review of the record in so far as it deals with the company's fares and their effect on traffic, revenue, and service is by no means complete. It is a conclusive answer to the company's allegation it had no notice that the reasonableness of its rate was an issue. The petition on this point concludes with the following paragraph:

"Even now, the company is not advised by any clear statement in the Commission's opinion on just what theory or basis the Commission premises its order reducing the company's rates. The opinion does not disclose whether the Commission has taken such action upon some theory that it might now undo a supposed mistake of the Commission itself made in 1937 and 1938 when it permitted the company to increase its rates from 5 cents to 7 cents; impose a rate reduction merely as a punishment to the company for failure to render a transportation service of some higher standard; or endeavors to fix just and reasonable rates for the future."

This observation we think is gratuitous. Decision No. 36739 is self-explanatory and states the basis on which the order reducing the rate from 7 cents to 6 cents rests. There is no finding and no implication that we proceeded on a theory intending to "undo a supposed mistake" made in 1937 and 1938, when the rates were increased by stages from 5 to 7 cents. Those increases, as heretofore pointed out, were specifically designated as an emergency increase and the three decisions in Application No. 21115 leave no doubt that the authorized fares were experimental and subject to revision and adjustment depending upon developing conditions and circumstances. The one-cent rate reduc-

tion made in the decision here under consideration was not imposed "as a punishment to the company for failure to render a transportation service of some higher standard" but because of changed conditions and circumstances the Commission finds that a rate in excess of 6 cents is unreasonable and excessive. The decision is specific that the character and quality of the service rendered by the company does not justify a rate higher than 6 cents and that with such rate the company will be able to earn a fair return on the rate base, provided a reasonably adequate service is furnished and the necessary amount of available equipment is placed in operation.

[1] Reference should here be made to the company's apparent protest in its argument on the petition for rehearing against the Commission's consideration of Exhibit No. 33.[6] That exhibit is referred to in the transcript under the designation "To be furnished figures on Passengers and Car Hours" and pertains to Exhibit No. 22, introduced by company's witness Kahn, entitled "A study to determine the net income of the company for the first six months of calendar years 1937, 1938, and 1939 if a 5-cent fare with free transfer had been in effect." In Exhibit No. 22 the number of passengers for the periods covered had been estimated by Mr. Kahn but the number of passengers actually carried by the company during the three periods was not shown in the exhibit. In the examination of company's witness Newton on September 15, 1943, Exhibit 22 was under discussion and the question was asked of Mr. Newton whether the record contained the actual number of passengers carried and the actual number of car hours operated by the company in the three periods, as distinguished from the estimated figures in Exhibit 22. The company agreed that these actual operating figures should be in the record and that they were to be given Exhibit No. 33.[7]

[6] Mr. Smith said:

"Now, this matter of procedural due process of law also requires that the testimony, the evidence, upon which the Commission acts be taken at the hearing so that the other party may have an opportunity to controvert it and to criticize it.

"This record is most curious. The Commission's decision discloses, and affirmatively, that the Commission used an exhibit, Exhibit No. 33, that was never mentioned at the hearing, never made available to the other party."

And further:

"The Commission's decision speaks of a Commission's Exhibit No. 33. I am reading from the first page of the opinion: 'Our staff made its studies and investigation in part prior to the hearing of May 10th, and in part during the course of the proceeding, and introduced the results in the form of 18 exhibits.' Then there is a footnote and it lists various exhibits, including No. 33. Now, either this opinion misstates that upon which it acted, or I can't read the opinion, because it seems to me very clear that the opinion says that Exhibit No. 33 was introduced by the Commission, and it was one of the results of the Commission's studies and investigation of the case. Now, I would be very glad and very much relieved if I find that the Commission's staff did not introduce an exhibit of that kind.

"*Commissioner Sachse:* I think that situation with reference to Exhibit 33 is very clearly set forth on pages 341 and following, and it really starts at page 340 and then runs through to 342."

[7] Tr. 340, et seq.:

"*Commissioner Sachse:* Have we now in the record the actual number of passengers that were carried on the Market Street lines in the three periods that are shown on the last page of that exhibit, namely, the first six months of 1937, first six months of 1938, and the first six months of 1939, and there also are in addition, the actual number of passengers that were carried, the actual number of car hours that were operated?

"*Mr. Hunter:* We have as to passengers and I think as to car hours.

"*Commissioner Sachse:* My point is in order to compare—

"*Mr. Hunter:* Yes.

We see no reason why Exhibit 33 should not have the Commission's consideration in this record.

The Commission Has Not Acted Arbitrarily or Capriciously in Reducing the Company's Rates from 7 cents to 6 cents and Has Not Acted without any Substantial Evidence that the 7-cent Rate Is Unreasonable.

[2–4] The petition for rehearing states: "In so far as the Commission may have premised its order reducing rates upon the theory that rates should be no higher than the value of the service rendered, the Commission has acted without substantial or any evidence before it by which the value of the transportation service being rendered by the company can be measured." This allegation is unfounded in fact. The extent, character, and quality of the company's service at the time of the investigation is referred to in Decision No. 36739 and findings are made. The record is replete with testimony on past and present service conditions and with comparative service statistics. There is nothing unusual or difficult about service measurements of street railway service. In the case before us no speculative or theoretical standards need be referred to. The record contains the company's actual operating performance for past years as reported in the company's sworn annual reports to this Commission and in the monthly reports filed with us. Such performance is shown in the operating expenses under the several accounts, in the number of cars operated, in the schedules and their performance, in the load factor statistics, in the maintenance records of roadbed, track, and equipment, in the depreciation and renewal practices, in the observance of the company's paving obligations under its franchise requirements, and in other actual operating and service records. Such evidence in this case permits of ready and exact comparison of service and operating conditions and standards as they existed when the fare was 5 cents and under the increased fares subsequent to 1937, and under the 7-cent fare at this time. We find less and greatly inferior service in all respects under the 7-cent fare as compared with the service rendered under the 5-cent fare. We find that in comparison with the performance of the Municipal Railway the company's service is distinctly inferior. The Municipal road renders its superior service at a 5-cent fare while the charge for this company's inferior service is 40 per cent higher, at 7 cents.

In its petition the company refers to the satisfactory service furnished to San Francisco's war production plants and to the Navy. We gave consideration and recognition in our decision to the company's efforts in that

"*Commissioner Sachse:* —the actual figures with those estimates. We can have that, we should have those figures. They, of course, are available in the records by months, the first six months of 1937, the first six months of 1938, and the first six months of 1939, both passengers and car hours?

"*Mr. Cassidy:* May we be excused just a moment? We are checking.

"*Commissioner Sachse:* Certainly, Mr. Hunter, you do not have to look that up now, just so it may be understood, with the agreement of Mr. Appel, that that will be considered, that information will be considered part of the record.

"*Mr. Cassidy:* I would suggest, Mr. Commissioner, when those figures are available, that they be put in as an exhibit with a number reserved.

"*Commissioner Sachse:* Very well.

respect.[8] Commander Jenkins, who testified on the service to Naval establishments, also stated that he was concerned primarily with "keeping the Navy establishments going and we leave the establishment of service to the general public up to the other agencies that have jurisdiction over it."

The company's allegations in its petition that "by picking and choosing bits of evidence revealed in the company's records of expenses incurred for the maintenance of its equipment and tracks, the Commission purports to find proof that the company has been derelict in its service duty" and that "neither the data referred to by the Commission in its opinion nor the testimony of the witness with respect thereto justifies the Commission's conclusion" are altogether unwarranted and the record is conclusive that the company has been and now is derelict in its service duty.

The petition refers to § 13 of the Public Utilities Act[9] and alleges that we have acted without substantial or any evidence upon facts essential to accepted standards of the rate-making process. The record in this case is conclusive, and our decision, we think, sets forth in sufficient detail that the service, the equipment and the facilities of the company are not conducive to the promotion of the safety, health, comfort, and convenience of its patrons, employees, and the public, and are not adequate, efficient, just, and reasonable. This has been true for a number of years past, and remains true at the present time. In this connection the petition alleges that no study was presented to indicate the probable financial results of the company's operation for the year 1943, or for any time in the future. The petition, and company counsel's argument as well, dwell at length upon the allegation that the Commission made its own assumptions of the traffic, the revenue, the expenses and net return

"*Mr. Cassidy:* So that might actually be in the record.

"*Mr. Appel:* We will have no objection to that, to furnishing you whatever information you desire on that line.

"*Commissioner Sachse:* That information, then, would have the Exhibit No. 33."

[8] Decision No. 36739 reads:

"No complaint can be made in regard to the company's service to establishments directly serving the war effort, such as shipyards and other war industries, and to Army and Navy concentration points. A letter of commendation from the Office of Defense Transportation is in evidence. Lieut. Commander Jenkins, U.S.N.R., Domestic Transportation Officer, 12th Naval District (former transportation research engineer of this Commission) testified that the company's service to Naval establishments has been satisfactory and that there has been coöperation with Navy headquarters. He stated that the Navy's transportation service requirements will greatly increase in the near future.

"We wish to put on record our conviction that all service requirements in furtherance of the war effort must have primary consideration of this company, as of all other utilities under our jurisdiction. Within the limits of our authority we are making, and shall continue to make, every effort to coöperate with the Army and Navy and with the appropriate Federal agencies towards that end."

[9] Section 13 of the Public Utilities Act reads:

"(a) All charges made, demanded, or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

"(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall be in all respects adequate, efficient, just, and reasonable.

"(c) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

for 1943, and for the future, on the various rates of fare; viz., 5 cents, 6 cents, and 7 cents. The company's position as to what the Commission may do with the record before it in the exercise of its discretion and judgment was stated by counsel in his argument (tr. 403 et seq.). The Commission, according to counsel, can make arithmetical computations, but it cannot reach a deduction or conclusion that earnings or traffic or expenses for the entire year will be proportionate or disproportionate to the experience of a substantial portion of such year, or will be greater or smaller than in the preceding year, even though there be evidence of definite trends and extended actual experience. We cannot accept the company's limitations thus set upon the functions and duties of the Commission in a proceeding of this nature. In our consideration of testimony we are not confined to the operation of an adding or computing machine, nor does the law or common sense prevent our exercise of reasonable judgment on the basis of an entire and voluminous record. In rate cases, particularly when the proceeding is held open for further study and action, the Commission has on numerous occasions in the past established tentative rates subject to readjustment as the results of experience may require. This practice was followed in the 1937 and 1938 rate applications of this company, when several interim rates were ordered and put into effect, although the company had asked for different fares, and testimony had not been introduced on the specific fares ordered by the Commission.

This point came before the United States Supreme Court in Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission, decided on February 5, 1934, 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 497. That case involved the validity of an order of the Pennsylvania Commission reducing the rates of Clark's Ferry Bridge Company. That order, in part, prescribed "(1) A rate of 8 cents cash toll for all ordinary passenger automobiles and wagons now paying 10 cents." The order also provided, "That said company file with this Commission monthly statements of income and operating expenses, showing the number of vehicles passing over its bridge in each class of traffic as contained in its tariff." One of the bases upon which it was claimed by the bridge company that the order of the Pennsylvania Commission was unlawful was that the Commission undertook to forecast into the future what the traffic was going to be and that there were uncertainties and speculative elements in any such future estimate. Upon that matter Mr. Chief Justice Hughes said, 291 US at p. 241, 2 PUR(NS) at p. 232: "The final attack is on the form of the Commission's order. The Commission fixed the amount of the annual gross revenue and then prescribed a tentative schedule of rates. *Appellant says that it is obvious that no one can tell in advance how many vehicles of different tariff classifications will pass over the bridge in a year and what annual gross revenue will be produced by a given schedule of rates. But, as the prescribed rates are expressly stated to be tentative, there is no ground for assuming that the Commission will reject an appli-*

cation to make such changes in the schedule as experience may show to be necessary in order to produce the stipulated revenue. There is nothing in the order which requires that the test period should be a year or any definite time. From the statements at the bar it appears that appellant has not put the tentative schedule in effect and has made no application to the Commission for a change in the schedule. If the allowance of gross revenue is adequate, as it has been found to be, there is no basis for complaint because of a schedule of rates which on application may be appropriately modified." (Italics supplied.)

The allegation that operating and financial results were in evidence only up to and including the month of March, 1943, is incorrect. The stipulation entered into on the first day of the hearing, May 10, 1943, placed into the record the company's own monthly operating reports "from 1938 to date." Incorrect also and misleading is the allegation in the petition that the Commission's engineer did not testify to the financial effect of the 1938 rates increases. The record on that point in the transcript, pages 17 and 18, is as follows:

Commissioner Sachse: Mr. Hunter, while you are back on again now I would like to ask you one or two questions. Taking sheet 1 of this exhibit and also at the same time, if you can, look at page 8. Is my conclusion correct that, after the fare increase in 1937 to the Market Street Railway the net revenue or operating income, notwithstanding the fare increase, disappears completely for the year 1938?

A. That is correct.

Q. In other words, before the fare increase in 1937 the operating income of the company was $305,577; in 1938 after the fare increase, there was no operating income, but a deficit of $40,234?

A. That is correct.

Q. Then in the succeeding years, 1939, 1940, and 1941 the company never recovered from these fare increases to even the lowest income, the lowest operating income, which was in 1937; in no year after the fare increase did the operating income reach again the operating income prior to the fare increase, with the exception of the year 1942?

A. That is correct.

Q. In other words, am I correct in concluding that the loss in passengers, in fare passengers, was so great up to 1942 that the fare increase was not able to overcome the loss in those passengers?

A. That is the way the results turned out.

Q. And, of course, in 1942, that being a war year, that situation changed?

A. Correct.

Mr. Hunter also testified to the "high riding habit" and the "average short haul," factors which make San Francisco an outstanding streetcar-riding community. These factors assure a greater volume of business and revenue if the rate is reduced.

The Commission has based its conclusions on the operating and financial results of the fare increases and not on mere theory. The record shows the company's actual experience and we can see no reason why we should substitute mere theory when we have before us the uncontradicted facts.

Decision No. 36739 Does Not Confiscate the Company's Property.

[5] The company alleges in the petition for rehearing that the sum of $7,950,000 does not represent the fair value of the company's operative property and cannot be used for rate-making purposes. Also, that a 6-cent fare will not produce a net operating income of about $500,000, or approximately 6 per cent on the base figure of $7,950,000 as found by the Commission.

We desire to discuss both allegations in some detail. The methods of determining a lawful and fair rate base by a regulating Commission in cases of this nature has repeatedly been defined by the United States Supreme Court, and the principles we must follow to find fair value for rate-making purposes are not obscure. The rule we have applied in the decision in this proceeding was laid down by the United States Supreme Court in Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 240, 53 S Ct 637. Mr. Chief Justice Hughes delivered the opinion of the court and said at p. 305:

"As the property remains in the ownership of the complainant, the question is whether the complainant has been deprived of a fair return for the service rendered to the public in the use of the property. This court has repeatedly held that the basis of calculation is the fair value of the property, that is, that what the complainant is entitled to demand, in order that it may have 'just compensation,' is 'a fair return upon the reasonable value of the property at the time it is being used for the public.' (Footnote citing cases.) *In determining that basis, the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available. The property is not ordinarily the subject of barter and sale and, when rates themselves are in dispute, earnings produced by rates do not afford a standard for decision. The value of the property, or rate base, must be determined under these inescapable limitations.* And mindful of its distinctive function in the enforcement of constitutional rights, the court has refused to be bound by any artificial rule or formula which changed conditions might upset. We have said that the judicial ascertainment of value for the purpose of deciding whether rates are confiscatory 'is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.' "—Citing cases —(Italics supplied.)

In the present case the property has recently twice been the subject of barter and was offered for sale, and its market value, or what is called exchange value, is available. The ascertainment of the present market or exchange value appears to have been exceptionally competent and authoritative. It was not based on opinion, testimony, or expert appraisal, but was made by the company's management and directors after extended studies and negotiations. The offer twice made, to sell all the operative property at the price of $7,950,000 was made, we must assume, in good faith since it was officially submitted

to the city and county of San Francisco.[10]

An election was held, as agreed between the city and the company, and the proposition to purchase the property at the price named failed to receive the required vote. That outcome, however, can have no bearing on the company's own measure of the market value of its own property. The deduction might be drawn that the price was higher than the majority of the voters were willing to pay.

In his argument on the value of the company's property, Mr. Smith points to the established rule that a utility valuation in a rate case cannot be based upon the capitalization of earnings, and he implies that the $7,950,000 figure was reached by that method. There is nothing in the record to indicate or suggest such a basis of valuation. The minutes of the directors' meeting, referred to above, clearly show how the market value was reached: "The president stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the city and county of San Francisco for the operative properties of the company." The board of directors, as has been shown, confirmed the judgment and conclusion of the company's president.

The petition for rehearing purports to reveal the steps by which we arrived at the conclusion that 6 cents is a reasonable fare. The recital of these alleged steps amounts to a complete misstatement of the plain language of our decision and the computations based upon such misstatements must necessarily lead to altogether erroneous and absurd numerical results. Such false results, in dollars of revenue, expense, and net operating revenue, are shown in the petition and in greater detail in a series of four tables submitted by counsel to the Commission in the course of his argument. The company's misleading computations are ostensibly based on the findings contained in our decision, when as a matter of fact the plain language of that decision clearly substantiates our conclusion that a 6-cent fare, with reasonably efficient operation and service, will meet all operating expenses

[10] The minutes of the company's directors' meeting of September 24, 1942, as shown in the transcript (p. 102) read in part as follows:

"Sale of the operative properties of Market Street Railway Company to the city and county of San Francisco. The president advised the board that he has agreed with the mayor and other city officials, as well as the Board of supervisors, to sell the operative properties of the Market Street Railway Company to the city and county of San Francisco for the sum of $7,950,000 cash, and that a charter amendment for the purpose of raising such sum by a revenue bond issue would be submitted to the qualified electors of the city and county of San Francisco at the next general election on November 3, 1942. The president stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the city and county of San Francisco for the operative properties of the company.

"Whereupon, on motion of Director Scott, duly seconded by Director Lilienthal, the following resolution was adopted:

"Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the city and county of San Francisco for the sum of $7,950,000 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"*Further Resolved,* that the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the city and county of San Francisco for the sum of $7,950,000 cash."

and in addition produce a return of approximately 6 per cent on the base figure of $7,950,000.

[6] The company first (on page 7 of the petition) refers to the operating results for 1942, apparently taken from the table on page 24 of our decision. There is no dispute as to the correctness of the figures for that year, including the net return figure of $1,069,914. These figures, it is to be remembered, are from the company's own 1942 income statement furnished the Commission in the regular sworn annual report. The petition then continues with the following allegation:

"The Commission concedes that $250,000 more should have been charged for depreciation, reducing the actual net revenue to $819,914. From this return the company had to meet the interest and sinking-fund requirements on its bonds, as the Commission previously had authorized it to do when approving its bond covenants, and had to meet also interest and retirement obligations on its unfunded debts that had accumulated from operating losses during earlier years." This allegation is incorrect. The depreciation practices of the company are in evidence in this record in great detail. Consecutively for eight years prior to and including 1942 the company voluntarily charged $500,000 annually to depreciation and each year's net income is stated on that basis. There is no reason why the company's depreciation accounting should be changed by us for the year 1942 any more than for any other year. The fact that the company paid its interest and sinking-fund charges in part out of its depreciation reserve, instead of making necessary replacements of depreciated equipment, is not relevant at this point.

[7] Next, the petition complains of our estimate on the results of operations for the year 1943 under the 7-cent fare, with reference to traffic, revenue, expenses, and net return. The complaint is that we considered the actual operating figures for eight months of the year and that we made assumptions for the remaining four months. On that account our conclusion that with the 7-cent fare continued in effect and with the quantities of service continuing and the number of cars operating as theretofore, the gross revenue for the full year 1943 would be $8,700,000, the expenses $7,940,000 and the net return $760,000, and the rate of return 9.6 per cent is alleged to be erroneous and contrary to due process. We have stated above the basis of our conclusions. It would be very simple to meet the test of fairness suggested by company counsel in his argument on rehearing [11] if our 1943 estimates were checked against the actual operating performance according to the company's own records and filed with this Commission under our order in this continuing rate proceeding. Counsel refused, however, to stipulate to such a check and in order to avoid a possible technical pitfall in the law on evidence we will not argue this point. We are confident the Commission kept within the limits of its discretionary judgment in concluding that the remaining months of 1943, with no change of fare and no material change in serv-

[11] Mr. Smith said: "Now, this matter of procedural due process of law is a very simple matter. Lawyers often use, though, many complicated words to express simple things. What we mean is fair play."

ice, would follow the established trend as evidenced in the record.

The petition next purports to show the "assumptions" made by us as to the results of the operation for the year 1943, "and presumably for the future," under a 5-cent fare. The petition says "It is found that such a fare would produce a net loss of $1,153,000 per year." The petition ignores the qualified and all-important language in our decision "without any allowance whatever for increased traffic." [12] The net loss of $1,153,000 per year, without considering the qualifying language in the decision, is obviously a mere mathematical calculation and reached by applying a 5-cent fare to the identical number of 7-cent fare passengers, i. e., a reduction of 2 cents for each of the 7-cent fare passengers. On this basis the petition concludes: "Hence, having found that the net profit of $760,000 expected at a 7-cent fare would be converted into a net loss of $1,153,000 if a 5-cent fare were in effect, the sum of these figures, or $1,913,000, is the amount of the expected reduction in gross revenue." The Commission, it must be clear, made no such assumption and reached no such conclusions.

The petition, continuing on its erroneous basis, then presumes to explain "The last step taken by the Commission as to the effect of the application of a 6-cent fare." Decision No. 36739, page 32, reads as follows:

"We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a 6-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately $8,500,000 will be produced. Operating expenses, including taxes and $750,000 for depreciation, we estimate, will amount to about $8,000,000, leaving a net operating income of about $500,000, corresponding to an approximate rate of return of 6 per cent on the base figure of $7,950,000. Such a return would be more than adequate under existing conditions."

The company in its petition, however, comes to a different conclusion. It says: "If a reduction of 2 cents in the company's existing 7-cent fare would result in a gross revenue decrease of $1,913,000, as the Commission estimates, it is evident that a reduction of one cent would operate to reduce gross revenue by fully one half that amount, for there could not be a greater stimulation of traffic at a 6-cent fare than at a 5-cent fare." Above it was shown that in its allega-

[12] The decision, page 31, reads as follows: "The fixing of a 5-cent fare on a twelve-months' basis, *without any allowance whatever for increased traffic*, and including in operating expenses $500,000 for depreciation, would result in a deficit of about $1,153,000. On the basis of the record the indications are that with a 5-cent fare a 25 per cent to 30 per cent increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5 per cent return on the $7,950,000 base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area." (Italics supplied.)

tion of what the 5-cent fare would accomplish, the Commission's qualifying language as to what a reasonable increase in traffic would do had been entirely ignored by the company and no allowance whatever for increased traffic was made in the company's estimate of $1,913,000 reduction in gross revenue. In its estimate for the 6-cent fare and coming to the conclusion that a deficit of at least $256,500 would be suffered, the petition reasons that "there could not be a greater stimulation of traffic at a 6-cent fare than at a 5-cent fare." Having made no allowance for any stimulation of traffic at a 5-cent fare, the company follows the same erroneous assumption as to the 6-cent fare.

A casual inspection of Decision No. 36739 shows that the Commission concluded with the 6-cent fare under reasonably satisfactory and adequate service, and with the operation of adequate available equipment, the next twelve-months' annual gross revenue would be $8,500,000 as compared with the 1943 revenue under the 7-cent fare of $8,700,000, a reduction of $200,000. For the future twelve-months' period under the 6-cent fare the Commission made its allowance of $8,000,000 of operating expenses compared with the 1943 operating expenses under the 7-cent fare of $7,940,000, an increased allowance for operating expenses of $60,000. Deducting the operating expenses from the operating revenue, under the future 6-cent fare, leaves a twelve-month net operating income of $500,000, which we concluded would be the approximate amount available for return, corresponding to a rate of return of about 6 per cent on the base figure of $7,950,000. Such a rate of return, we concluded, would be more than adequate under existing conditions.

Conclusion

The Supreme Court of the United States has just rendered another decision which supports our views of the policy and methods we have followed throughout these proceedings. We refer to the case of Federal Power Commission v. Hope Nat. Gas Co. decided by the United States Supreme Court as recently as January 3, 1944, 320 US 591, 88 L ed 276, 51 PUR (NS) 193, 64 S Ct 281. This case involved the legality of an order of the Federal Power Commission reducing the rates charged for natural gas by Hope Natural Gas Company. It is unnecessary here to discuss that case at length. We do desire, however, to quote portions of that decision which are particularly pertinent here. In upholding the order of the Federal Power Commission Mr. Justice Douglas, in stating the opinion of the court, 51 PUR(NS) at p. 199, says:

"When we sustained the constitutionality of the Natural Gas Act in the Natural Gas Pipeline Company Case (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736, we stated that the 'authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the states under the Fourteenth to regulate the prices of commodities in intrastate commerce.' 315 US at p. 582, 42 PUR(NS) at p. 135. Rate making is indeed but one species of price fixing. Munn v. Illinois (1877) 94 US 113, 134, 24 L ed 77. The fixing of prices, like other applications of the police power, may

reduce the value of the property which is being regulated. *But the fact that the value is reduced does not mean that the regulation is invalid.* Block v. Hirsh (1921) 256 US 135, 155-157, 65 L ed 865, 41 S Ct 458; Nebbia v. New York (1934) 291 US 502, 523–539, 78 L ed 940, 2 PUR(NS) 337, 54 S Ct 505, 89 ALR 1469, and cases cited. *It does, however, indicate that 'fair value' is the end product of the process of rate making not the starting point as the circuit court of appeals held. The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated."* [9] (Footnote 9 omitted.) (Italics supplied.)

In the case before us the market or exchange value of the company's operative property was not reduced by any lower rates prescribed by this Commission. On the contrary, the Commission in the 1937–1938 proceedings heretofore referred to substantially increased the company's rates. That increase, by stages from 5 to 7 cents, finally amounted to a raise of 40 per cent. Notwithstanding the increase the company's net revenues fell below the previous net revenue from the 5-cent fare in each of the subsequent years 1938, 1939, 1940, and 1941 when the higher fare was in effect. The record is conclusive that the value of the company's property declined because of the operation of economic forces and, particularly, by reason of the effective competition of the Municipal Railway which furnished a better service at the lower rate.

The decision of the United States Supreme Court in the case referred to continues, 51 PUR(NS) at p. 200:

"We held in Federal Power Commission v. Natural Gas Pipeline Co. *supra,* that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' Id. at p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the act. Id. at p. 586. Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. Cf. Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 304, 305, 314, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 70, 79 L ed 761, 6 PUR(NS) 449, 55 S Ct 316; West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 692, 693, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894 (dissenting opinion). *It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end.* The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's orders does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate or-

der under the act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Cf. Louisiana R. Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 53 L ed 577, 29 S Ct 357; Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 164, 169, 78 L ed 1182, 3 PUR (NS) 337, 54 S Ct 658; California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 401, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334." (Italics supplied.)

Later in the same opinion, 51 PUR (NS) at p. 208, the court says:

"It is suggested that the Commission has failed to perform its duty under the act in that it has not allowed a return for gas production that will be enough to induce private enterprise to perform completely and efficiently its functions for the public. The Commission, however, was not oblivious of those matters. It considered them. It allowed, for example, delay rentals and exploration and development costs in operating expenses. No serious attempt has been made here to show that they are inadequate. *We certainly cannot say that they are, unless we are to substitute our opinions for the expert judgment of the administrators to whom Congress entrusted the decision. Moreover, if in light of experience they turn out to be inadequate for development of new sources of supply, the doors of the Commission are open for increased allowances. This is not an order for all time. The act contains machinery for obtaining rate adjustments.*" (Italics supplied.)

This latest decision of the Supreme Court of the United States, we are confident, supports our Decision No. 36739 in these proceedings. We have found that a 6-cent fare for Market Street Railway Company is just and reasonable and that any fare in excess of 6 cents is unjust and unreasonable. If, in the light of experience, the 6-cent fare should prove to be unreasonable under all the circumstances present in the operation of the company's street railway system, the Public Utilities Act contains the machinery for obtaining rate adjustments.

Our decision makes provision for the filing of monthly operating and service reports and we shall keep ourselves continuously informed of the traffic and revenue results from the 6-cent fare and also of all other pertinent operating and service facts. If, in the light of the actual experience, it appears that the fare should be changed we shall, on our own initiative, take appropriate action.

We conclude that the petition of Market Street Railway Company for rehearing of Decision No. 36739 should be denied.

Market Street Railway Company

v.

California Railroad Commission et al.

S. F. No. 16988
— Cal(2d) —, — P(2d) —
July 1, 1944

EN BANC. REVIEW *of Commission order prescribing street railway rate reduction; order affirmed. For Commission decision see ante, p. 214.*

Rates, § 649 — Procedure — Sufficiency of notice and hearing.

1. The notice of a rate investigation and the course of the Commission hearing adequately informed the respondent transit company that the reasonableness of its present rates was under investigation where various studies, reports, and other statistical data, including the record in a prior rate proceeding, together with an exhaustive investigation into the present state of the properties and the adequacy and value of the service were required by the Commission to be produced as a part of the record and where the company had the opportunity to supplement or explain the reports and data introduced in evidence, p. 234.

Valuation, § 21 — Rate base determination — Consideration of court decisions — Gas and common carrier rate bases.

2. Supreme court holdings in cases involving the valuation of natural gas properties for rate-making purposes may be considered in a case involving the valuation of common carrier properties for rate making, p. 247.

Appeal and review, § 48 — Conclusiveness of Commission findings — Rate determination.

3. Commission action in fixing rates is conclusive upon the court unless shown to be confiscatory or unless invasion of constitutional rights is clearly established, p. 247.

Rates, § 120 — Standard for rate fixing — Reasonableness.

4. The standard for rate fixing is that of reasonableness rather than any fixed formula or rule, p. 248.

Appeal and review, § 34 — Burden of proof — Attack on rate order.

5. One attacking a Commission rate order must be charged with the burden of showing that the evidence does not support the Commission's finding of value, and that the reduced rate is unreasonable and will result in confiscation of its property, p. 248.

Valuation, § 104 — Accrued depreciation — Book reserve basis.

6. The Commission, in determining the rate base of a transit company, properly refused to follow the practice of adopting as an annual charge to

plant consumption the company's book depreciation reserve or any other hypothetical sum approved by accounting practices, where competition by an unregulated municipal utility necessitated operation at a loss, where the company did not devote to replacement and repair the amounts charged off on its books for those purposes, where its charges to depreciation reserve were lower than the actual plant consumption, and where the company permitted unusual deterioration in view of negotiations for sale of the properties started many years ago, p. 248.

Valuation, § 41 — Measures of value — Capitalization.

7. Capitalization has little relation to the depreciated value of a public utility's investment, p. 248.

Valuation, § 335 — Going concern value.

8. Going concern value can have little, if any, place in the rate base of a transit company which has permitted unusual deterioration in view of negotiations for sale of its properties, except as the special factor of competition with an unregulated municipal utility has so affected that value as to indicate it at nil, p. 248.

Valuation, § 332 — Going concern allowance — Separate allowance.

9. A separate appraisal of the going concern element is not required for the purpose of determining the reasonableness of a street railway company's rates, p. 248.

Valuation, § 37 — Measures of value — Sale offer.

10. The Commission properly accepted a street railway company's offer to sell its properties to the city, made in a profitable period, as the best evidence of the fair value of the company's property, p. 248.

Valuation, § 21 — Rate base determination — Real values.

11. Return should be based upon the real rather than the nominal paper valuation of public utility property and there is no denial of due process in rejecting conjectural and unsatisfactory estimates of value, p. 248.

Valuation, § 37 — Measures of value — Sale offer.

12. Sale offer price was properly adopted by the Commission as a rate base where it was impossible to say, in the light of the evidence in the proceeding, that that figure did not bear a proper relation to the fair value of the utility under existing conditions, p. 248.

Appeal and review, § 48 — Commission order — Rate fixing.

13. The court will not disturb Commission findings relating to estimates of probable increase in street railway traffic under a reduced fare and improved service, and to the probable future operating revenues, expenses, and other costs, when they are disputed questions of fact, p. 251.

Rates, § 504 — Street railway — Cost ratio.

14. The assumption that the cost ratio under a 6-cent street railway fare will be the same as under a 7-cent fare is fallacious, p. 251.

Return, § 43 — Reasonableness — Past losses and deficits.

15. That a public utility company has suffered deficits in the past does not justify excessive profits in the future, p. 252.

Rates, § 130 — Reasonableness — Quality of service.

16. The Commission, in fixing rates, has statutory authority to consider the quality of the facilities and service of the company involved, p. 252.

Appeal and review, § 48 — Conclusiveness of Commission findings — Rate fixing.

17. When public utility interest has received constitutional protection the findings of the Commission on the consumer interest become final in a rate proceeding, p. 252.

Return, § 15 — Reasonableness.

18. Whether the right to just compensation for service rendered has been denied to a utility depends upon the special facts in the case, p. 253.

Appeal and review, § 54 — Commission decisions — Procedural errors.

19. A court reviewing Commission decisions should not set them aside for mere errors of procedure not amounting to lack of due process, p. 253.

Rates, § 636 — Reasonableness — Temporary rates.

20. A tentative rate reduction prescribed by the Commission for an indeterminate duration cannot be upset as unreasonable where there is no ground for assuming that the Commission will reject an application to make such changes as experience may show to be necessary in order to produce the stipulated revenue, p. 253.

APPEARANCES: Cyril Appel and Pillsbury, Madison & Sutro, all of San Francisco, for the petitioner; Everett C. McKeage, Roderick B. Cassidy, Wyman C. Knapp, Frank B. Austin, and John M. Gregory, all of San Francisco, for the respondents.

SHENK, J.: The Railroad Commission on its own motion ordered an investigation into the reasonableness of the rates and the sufficiency and adequacy of the service rendered by Market Street Railway Company in San Francisco. After hearings the Commission filed its opinion and order reducing the rate of base cash fare for transportation of passengers in the city from 7 to 6 cents. The company petitioned for a rehearing which was denied. The matter is here on its petition for a review pursuant to § 67 of the Public Utilities Act.

The petitioner attacks the proceedings and order as a deprivation of orderly due process, and as a confiscation of its property.

I

[1] On the first, the procedural question, the company claims that it was denied due process by a failure of notice that it was being charged with the maintenance of unreasonable rates; that the issue of unreasonableness of rates was not framed during the course of the hearing; that the Commission introduced no evidence of unreasonableness of the prevailing rate, and that the company was not afforded an opportunity to present evidence on the issue.

The petitioner does not claim that it did not receive a copy of the "Order Instituting Investigation," which was mailed to it. That order notified the company that "the Commission, believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company," would institute an investigation upon its own motion "into the

reasonableness of the rates, charges, classifications, rules, and regulations" of the company, "and also into the reasonableness, sufficiency, and adequacy of the operations, service, and facilities of said company." The 10th day of May, 1943, was set as the time for the commencement of the public hearings. Notice of the time of hearing was also sent to other public utilities, and public and civic bodies and officers, including the California Street Cable Railroad Co., the mayor and the board of supervisors of the city and county of San Francisco, the department of public works, the board of public utilities, the city attorney, the San Francisco Chamber of Commerce, the Office of Defense Transportation, and others. Hearings were conducted on May 10, July 15, and September 15, 1943. Thirty-three exhibits were introduced, consisting of reports and documents bearing on income and revenues, studies and reports of value, analyses of profit and loss accounts, operative expenses, statistical studies in passenger revenue and car and bus hours, as well as studies in operative equipment, traffic checks, results of operation, charges and revisions in operative practices, and comparative rate and operation analyses of Market Street Railway and the Municipal Railway of San Francisco. Certain voluminous annual and monthly reports in addition were by stipulation deemed to be before the Commission. The oral evidence is contained in three volumes of transcribed testimony. Witnesses were produced by the Commission, by the city, and by the company. J. G. Hunter, produced by the Commission, the first witness to testify, gave a resumé of the matters for investigation, which included "operating expenses, taxes, depreciation, studies on rate base figures, the estimated operating results that would obtain under different fare structures." Comparative balance sheets, charges, and reports were introduced dealing with these subjects. Comparisons were made between appraisals based on book value and on historical cost. Testimony on the state of the physical properties, on employment conditions, on available manpower, on adequacy of the service and facilities, on the possibility of interchange of facilities and a universal transfer system, on the company's franchise obligations in roadbed upkeep, and on elements to be considered in evaluating service, was also received. Mr. Samuel Kahn, who is president and general manager of the company and an engineer and expert in utility management, and Mr. Leonard V. Newton, vice president of the company and engineer in charge of operations, testified on behalf of the company. On direct and cross-examination Mr. Kahn testified and presented exhibits illustrating his opinion of the effect of various rate structures. Mr. Newton's testimony was confined mainly to operations and employment conditions.

Thus, the company had the required notice of hearing on the question of reasonableness of the rates and full opportunity at the hearings to present any further evidence on the rate issue, had it chosen to do so. The notice and the course of the hearings were adequate to inform the company that the reasonableness of the present rate was under investigation. The

discussion on this phase of the review may be concluded by stating that the various studies, reports, and other statistical data, including the record in prior rate proceedings, together with the exhaustive investigation into the present state of the properties and the adequacy and value of the service, must be deemed to have had a direct bearing on the rate issue. The fact that the financial and rate base studies were required to be produced by the Commission as a part of the record was sufficient to give to the company ample warning that the Commission was seriously proceeding into an investigation of the reasonableness of the existing rate. In fact Mr. Kahn's testimony clearly indicated that he so understood the purpose of the inquiry. The statement of counsel that the elements of fair play were so lacking in the proceedings as to call for a conclusion that orderly due process was not observed is not supported by the record. The company had the opportunity to supplement or explain the reports and data introduced in evidence. The Commission also accorded the opportunity for argument on the petition for rehearing, but no supplement or explanation of the submitted data was referred to on the argument on rehearing. At that time the petitioner merely contended that a rehearing should be granted in order to conduct further studies on the estimates of future revenues, expenses, and net return under various rates, as well as valuation studies to supply evidence of different rate bases, including reproduction cost, different from those on which the Commission placed its estimate of a fair return from operations under the reduced rate. Under these circumstances the comment of the court in California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 393, 82 L ed 319, 21 PUR(NS) 480, 483, 58 S Ct 334, is appropriate here: "As we have seen, the respondent [petitioner] was heard, the Commission received the testimony of respondent's witnesses, its exhibits and argument. There is nothing whatever to show that the hearing was not conducted fairly." The petitioner's further demands are more properly addressed to the matter of reasonableness in relation to due process when we come to consider the second phase of this review, namely, the issue of confiscation.

II

The opinion of the Commission gives the essential background. The year 1852 saw the first omnibus service in San Francisco; 1860 the first street railway; and 1873 the first cable line. The cable was more suited to the hilly terrain and some of the horsecar lines were converted to the cable method of operation. In 1893 Market Street Railway Company was incorporated and took over eleven of seventeen independent streetcar lines.

By city charter amendments ratified by the electors in 1902, provisions were enacted for municipal acquisition of public utilities. (Stats 1903, pp. 586 et seq.) Privately owned street railways were permitted to hold franchises for not to exceed twenty-five years, whereupon tracks and overhead construction should revert to the city without cost.

In 1902 United Railroads of San Francisco was incorporated. It suc-

ceeded to the properties of Market Street Railway Company and five additional lines. The earthquake and fire of 1906, caused heavy losses and a large reconstruction program ensued.

In 1912 the first municipal line was placed in operation. Municipal railway expansion proceeded rapidly in order to serve the traffic during the Panama Pacific International Exposition in 1915. The city-built lines of extension parallel with some of the Market Street Railway lines.

United Railroads became unable to pay the interest on its bonded indebtedness and in 1921 its properties were acquired by the bondholders under foreclosure sale and were in turn sold to Market Street Railway Company. The 25-year franchise limitation was not enforced. Pursuant to § 131 of the city charter (Stats 1931, p. 3052), the company surrendered its franchises and was granted a 25-year permit to continue operations subject to the right of the city to acquire the properties upon paying the fair value of the operative properties exclusive of going concern value or other intangible elements. In 1925 the company began placing motorbuses in operation and by December, 1942, it had 125 busses in service.

The competitive factor induced by the continuing expansion of the municipal railway system became a constantly increasing threat to the operations and financial integrity of the company. The Market Street Railway Company came under the jurisdiction of the Railroad Commission, while the municipal lines remained subject to the regulation and supervision of the city. The municipality retained a 5-cent fare even though the system was operated with a deficit. Market Street Railway's original franchises included a 5-cent fare clause.

In 1937 Market Street Railway applied to the Railroad Commission for an increase of the fare to 7 cents. The application was granted to the extent of permitting a 2-cent transfer charge. At that time the company was admittedly not seeking the increase on the basis of a fair return on its investment, but sought merely to meet $1,000,000 additional annual operating expense due to increased taxes and labor costs. (Decision No. 29889, 40 Cal RCR 525, 20 PUR (NS) 278, 282.) In its opinion in that proceeding the Commission said: "It is clear from this record that operation under any reasonable fare structure will not in the near future yield a revenue sufficient to provide a full return on any reasonable rate base of applicant's property, so long as the competing municipal lines are operating on a 5-cent fare. For that reason this record does not deal with the matter of establishing a rate base for this property. In fact, the only reference to valuation in this record is that which is contained in the application to the effect that a valuation made [in a report filed with the supervisors in 1929] by the late M. M. O'Shaughnessy, former city engineer of San Francisco, shows that the present fair value of applicants property is at least $24,000,000." Its decision (Ibid, at p. 532, 20 PUR(NS) at p. 283) discloses that the president of the company was of the opinion "that experience alone could tell what results would obtain if the proposed fare structure were put into effect."

In 1938 the company made a sup-

plemental application for an increase to a 7-cent fare on a showing that revenues had declined and that further increased operating expenses were imminent due to higher labor costs. The Commission granted the application to the extent of permitting a 7-cent fare, four tokens for 25 cents. Again the Commission noted that the company was not seeking the new rate on the basis of a fair return on its investment. (Decision No. 30849, 41 Cal RCR 349, 351.)

The city of San Francisco granted franchises to bus companies for operation on a 10-cent fare in direct competition with the company, but refrained from granting any such franchises which would compete with the municipal lines. The company attempted to effect economies by installing one-man operation in its electrically operated cars, but that practice was discontinued when the Federal courts upheld a San Francisco city ordinance forbidding one-man operation of streetcars. San Francisco v. Market Street R. Co. (1938) 27 PUR (NS) 355, 98 F(2d) 628; (1939) 305 US 657, 83 L ed 426, 59 S Ct 357, 306 US 667, 83 L ed 1062, 59 S Ct 460. The company had attempted to abandon unprofitable lines, but had been unable to obtain permission from the city to do so.

Consequently in the same year (1938) the company made a second supplemental application for a straight 7-cent basic fare. The showing was that as a result of the increase in fares in a 12-month period more than 10,000,000 passengers had been diverted to the municipal lines, and the company was operating at a loss. San Francisco is a city with what is termed a "high riding habit" and a large percentage of the lost traffic consisted of short-haul riders who declined to pay the 7-cent fare. In that proceeding the Commission concluded that the company was entitled to relief to prevent a collapse or partial collapse of its service, and, accepting the company's estimate that revenues could be increased only by a straight 7-cent fare, it granted the petition conditionally. It required the company forthwith to petition the board of supervisors of the city for permission to abandon operation on specified lines and for such form of relief as might be necessary to eliminate "jitney" competition. The company complied with the requirements and on December 12, 1938, the board of supervisors denied the requests. Thereupon, on December 27, 1938, the Commission ordered the new schedule based on a straight 7-cent fare effective January 1, 1939.

The straight 7-cent basic fare has continued until the present time. The hoped-for results, however, did not immediately materialize, even with the stimulation afforded by the holding of the Golden Gate International Exposition in 1939–1940. Compared with the year 1936, the last year under the 5-cent fare, the 1941 traffic and revenue reached the lowest ebb, showing a falling off of 64,056,000, or 42 per cent, in revenue passengers, and $1,426,282, or 19 per cent, in passenger revenue. The figures show a decline of 39 per cent in revenue as compared to the maximum revenue year of 1925. The state of the operative properties and the adequacy of the service continued to decline. The company became unable to discharge

its franchise obligations for roadbed maintenance and the city was attempting to collect $1,691,162.76 claimed as arrears.

After the entry of this country into the present world war in 1941, and upon the stepped-up production of war materials, an abnormal increase in traffic occurred resulting in increased revenue, accompanied, however, by a further marked deterioration in the operative properties and in the service to the public.

The Commission examined the condition of the properties and the adequacy of the service in relation to the prevailing rates for transportation. It found evidence of long-time neglect, deterioration, mismanagement, indifference to urgent public need, and other causes productive of poor service, not all of which were chargeable to the war. The company refused to lease idle equipment to the municipality although the latter had sought to put it into service on its own lines after the Office of Defense Transportation had denied it priority rights for new equipment because of the existing condition of idleness of rolling stock in San Francisco, none of which was attributable to the city. The company was unsuccessful in retaining or drawing its share of the available manpower, which was being diverted to the Municipal Railway. Undeniably there is evidence of "deplorable condition of track, of deferred maintenance, unfulfilled street paving obligations, obsolescence of streetcar equipment, and the failure of the company to replace, during prewar years, uneconomical and outdated facilities by modern, more efficient, and more profitable means of mass transportation," conditions which had grown progressively worse over a period of years antedating the commencement of the war. Service, with the exception of that to establishments directly engaged in the war effort, such as shipyards and Army and Navy concentration points, steadily declined in quality and adequacy. The Commission stated that an analysis of the company's finances showed that over a period of years the company had diverted to payment of indebtedness funds urgently required for proper maintenance and for the replacement of depreciated property.

The record makes it apparent, and the Commission recognized, that in the past competition was the factor which prevented the company from reaping financial benefit from any rate structure; that heretofore the private automobile has given the railways competition; and that source of competition is partially eliminated during the period of rubber and gasoline shortage; that the increased traffic due to war activities will not last, and that as soon as transportation conditions return to normal the company will again be handicapped by a 7-cent fare against the competition of the Municipal Railway and the automobile; and that under any rate structure the condition of the company will grow even worse than at the former low level unless the service is greatly improved. It is also disclosed that while prior to the war the 5-cent fare produced a greater gross and net annual revenue than any fare in excess of 5 cents, a 5-cent fare structure will not realize any net return to the company under a competitive system of operation.

Compared with Market Street Rail-

way, the Municipal Railway under a 5-cent fare has gained in quality of service and equipment, and in financial returns. As with Market Street Railway, however, the Municipal Railway's increase in financial returns began with the abnormal increase in traffic.

Attempts had been made to have the city of San Francisco acquire the Market Street Railway. Transportation surveys and property appraisals had been prepared and negotiations carried on over a long period of years. At the general election of November 3, 1942, the electorate of San Francisco rejected a proposed revenue bond issue to raise $7,950,000, the price theretofore settled upon at which the company would sell its properties to the city. A similar proposition at the same figure was again submitted and again rejected at a special election held April 20, 1943.[1]

The Commission rejected the company's book figures of cost and depreciation and selected the offered price, $7,950,000, as the value of the utility and rate base for the purpose of computing the return to the company under various rate structures. It concluded that operation under a 6-cent fare, after deduction from gross passenger revenue of operating expenses, depreciation and taxes, would produce a net return of slightly more than 6 per cent on the rate base of $7,950,000. It computed that a 7-cent fare, allowing an increase in operating expenses to $7,940,000, including $750,000 for depreciation and $590,000 for taxes, would yield annual net operating revenues of $760,000, a return of 9.6 per cent on the rate base. Figuring the return from a 7-cent fare on a depreciation allowance of $500,000, which is the amount the company had been charging off annually, the percentage would be 12.7. The Commission found both these rates of return excessive and unjustified by the present service. Its computation under a 5-cent fare, with a depreciation allowance of $500,000, indicated a deficit of $1,153,000. On a 6-cent basic fare it estimated annual gross revenue at $8,500,000, operating expenses, depreciation, and taxes at $8,000,000, leaving a net operating income of $500,000, slightly more than 6 per cent on the base figure of $7,950,000, which return it found to be reasonable. It said that consideration of service alone and of the value of service to the patron would justify the fixing of a 5-cent fare; but it determined that a 6-cent fare was a just, fair, and reasonable rate, provided every possible and reasonable effort promptly be made by the company to furnish an improved service, and that a fare in excess of 6 cents was unjust and unreasonable.

No contention is urged that a 6 per cent return on the investment is not adequate, under present conditions, to attract capital and keep a utility in a solvent condition. The question is whether the record clearly establishes that the selection of the figure of $7,950,000 as the rate base will result in confiscation of the company's property.

The Commission rejected all other figures and selected the offered price as that most truly representative of

[1] Since this review proceeding was commenced and on April 16, 1944, the electorate of the city voted favorably on a prosposition to acquire the operative properties of the company on a self-liquidating plan for $7,500,000.

the value of the company's properties. It said that "the only available indication in this record of the present value of the company's properties used and useful in the public service is the resolution of the company's board of directors, passed on March 25, 1943. The resolution reads as follows:

"Sale of the Operative Properties of the Market Street Railway Company to the City and County of San Francisco. The president advised the board that he had agreed with the mayor and other city officials, as well as the board of supervisors, to sell the operative properties of Market Street Railway Company to the city and county of San Francisco for the sum of $7,950,000 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the city and county of San Francisco at the general election on November 3, 1942. The president stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the city and county of San Francisco by a revenue bond issue would be submitted to the qualified electors of the city and county of San Francisco at a special election to be held on April 20, 1943. The president also stated that the price mentioned is the amount that had been agreed upon for the purchase by the city and county of San Francisco of the operative properties of the company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

"Whereupon, on motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted.

"Resolved, that the actions of the president in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the city and county of San Francisco for the sum of $7,950,000 cash be, and the same hereby are, ratified, approved, and confirmed; and it is

"Further resolved, that the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway to the city and county of San Francisco for the sum of $7,950,000 cash."

The Commission adopted the price stated in the offer as the "present fair market value," without the necessity of expressing an "opinion on the reasonableness of the figure of $7,950,000 as an exact measure of the present fair value of the company's operative property in its present depreciated physical and service condition, with its past earning record and its prospective future under the competitive transportation situation obtaining in San Francisco." The petitioner contends that the ultimate figure adopted by the principals for the sale of the property to the city and therefore by the Commission as the present fair market value was based on a capitalization of earnings;

that the Commission should have proceeded on a consideration of depreciated reproduction cost and historical cost, in accord with the holding of the Supreme Court of the United States in Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, and other cases.

In Smyth v. Ames, after stating that the basis of all calculations as to the reasonableness of rates must be the fair value of the property being used for the convenience of the public, the Supreme Court proceeded to lay down the essential matters for consideration in ascertaining that value (p. 546). "And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Subsequent decisions emphasized the necessity for finding fair value by weighing all the elements prescribed in Smyth v. Ames. Notably in Minnesota Rate Cases (1913) 230 US 352, 434, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18, the Supreme Court said that there must be a "reasonable judgment having its basis in a proper consideration of all relevant facts," repeating the language quoted from Smyth v. Ames. The emphasis progressed to the extent that in many cases, if one factor or element, particularly that of reproduction cost new, had not received consideration in arriving at "present fair value," it was determined that the constitutional due process requirement had been violated. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 67 L ed 1176, PUR1923D 11, 43 S Ct 675; McCardle v. Indianapolis Water Co. 272 US 400, 71 L ed 316, PUR1927A 15, 47 S Ct 144; United R. & Electric Co. v. West, 280 US 234, 74 L ed 390, PUR1930A 225, 50 S Ct 123; cf. Pacific Gas & E. Co. v. San Francisco, 265 US 403, 68 L ed 1075, PUR1924D 817, 44 S Ct 537; Los Angeles Gas & E. Corp. v. Railroad Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334. Thus due process was deemed not to have been observed if it was shown that the regulatory body, in evaluating the plant or operative properties for rate purposes, had not considered depreciated reproduc-

tion cost as well as book cost, actual (sometimes called original or historical) cost, capitalization, etc. Since calculations under each formula led to widely different results it became apparent that in Smyth v. Ames rule had proved itself unworkable. Criticisms of it are found in the dissenting and concurring opinions in Southwestern Bell Telephone Company Case, *supra,* 262 US at p. 289; Pacific Gas & E. Co. v. San Francisco, *supra,* 265 US at p. 416; McCardle v. Indianapolis Water Co. *supra,* 272 US at p. 421; United R. & Electric Co. v. West, 280 US at p. 255; and West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 680, 79 L ed 1640, 8 PUR (NS) 433, 55 S Ct 894. In the Southwestern Bell Telephone Company Case, Justice Brandeis (Justice Holmes concurring with him), disagreed with the majority view that the Commission must consider reproduction cost new under the slogan "Estimates for tomorrow cannot ignore prices of today," and advocated the prudent investment theory.

In Georgia R. & Power Co. v. Georgia R. Commission, 262 US 625, 67 L ed 1144, PUR1923D 1, 43 S Ct 680, decided less than three weeks later, Justice Brandeis writing the majority opinion distinguished the Southwestern Bell Telephone Company Case. The court decided that the Commission was not bound to slavish adherence to reproduction cost new in a case where the evidence showed that it gave consideration to that element, the dissenters seeking to apply the Southwestern Bell decision. On the same day the court also decided Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, *supra,* wherein reproduction costs had not received consideration and the court reversed, following the Southwestern Bell Case, Justice Brandeis disagreeing with the grounds of reversal.

In the case of McCardle v. Indianapolis Water Co. *supra,* 272 US at p. 408, the court required a further step, namely, that the future as well as the present must be regarded; that present value could not be determined without an honest and intelligent forecast as to probable price and wage levels, probable yield over operating expenses, etc., during a reasonable period in the immediate future.

In 1933 the Supreme Court obviously began to anticipate a departure from adherence to Smyth v. Ames, *supra.* In the case of Los Angeles Gas & E. Corp. v. Railroad Commission, *supra,* the court in effect upheld the California Commission which, in making a rate reduction order, had rejected reproduction cost figures as "too uncertain and hypothetical to enter into a rate base figure." The court relied on the Minnesota Rate Cases, *supra,* for the theory that the cost-of-reproduction method did not justify the acceptance of results which depended upon mere conjecture. It pointed out the necessity of distinguishing between the legislative and judicial functions; that it is the appropriate task of the Commission to determine the value of the property affected by the rates it fixed, and that of the court, in deciding the question of confiscation, not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its total

effect is to deny to the owner of the property a fair return for its use. It said: "We do not sit as a board of revision, but to enforce constitutional rights. San Diego Land & Town Co. v. Jasper (1903) 189 US 439, 446, 47 L ed 892, 23 S Ct 571. The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof and the court may not interefere with the exercise of the state's authority unless confiscation is clearly established." (*Supra*, 289 US at p. 304, PUR1933C at p. 240.)

In April, 1934, the Supreme Court upheld the Commission's order prescribing rates for telephone service in the case of Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 78 L ed 1182, 3 PUR(NS) 337, 345, 54 S Ct 658. It rejected the company's claim that the rates were grossly confiscatory because not based on estimates of original or book cost and reproduction cost new; for, to recognize the claim, it stated, would be to sanction "a large increase over the rates which have enabled it to operate with outstanding success. Elaborate calculations which are at war with realities are of no avail."

West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 70, 79 L ed 761, 6 PUR(NS) 449, 453, 55 S Ct 316, reiterated the restricted function of the court declared in Los Angeles Gas & E. Corp. v. California R. Commission, *supra*, saying: "Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (Southern R. Co. v. Com. ex rel. Virginia [1933] 290 US 190, 78 L ed 260, 4 PUR(NS) 293, 54 S Ct 148) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error."

Nevertheless, less than six months later, in West v. Chesapeake & P. Teleph. Co. *supra*, the court affirmed a decree enjoining the Commission from enforcing prescribed rates because of the method employed to ascertain value, namely, by the use of price trend indices, rather than on the ground that the rate was confiscatory.

In April, 1936, in St. Joseph Stock Yards Co. v. United States, 298 US 38, 53, 80 L ed 1033, 14 PUR(NS) 397, 404, 405, 56 S Ct 720, the majority of the court again reviewed the distinctive functions of Commission and court, saying that the "judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may prop-

erly attach to findings upon hearing and evidence. . . . Judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency. . . . We have said that 'in a question of ratemaking there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing.' . . . The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. . . ."

In California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334, the court, reëmphasizing the principle from Los Angeles Gas & E. Corp. v. Railroad Commission, Lindheimer v. Illinois Bell Teleph. Co., West Ohio Gas Co. v. Ohio Pub. Utilities Commission, *supra,* and other cases, refused to consider as an error amounting to a denial of due process the Commission's treatment of the company's estimate of reproduction costs as without probative value. The dissenting opinion of Justice Butler, who invoked application of the Smyth v. Ames, *supra,* rule, pointed out that the California Commission consistently refused to apply the Smyth v. Ames criteria.

Then in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 586, 86 L ed 1037, 42 PUR(NS) 129, 138, 62 S Ct 736, the court again appeared to approve nonadherence to the rule of Smyth v. Ames by Utility Commissions. It upheld an interim order of rate reduction by the Federal Power Commission, acting under the Natural Gas Act of 1938, 52 Stat. 821, 15 U. S. C. Sec. 717, which required that rates and charges for transportation and sale of gas in interstate commerce should be "just and reasonable." The gas company sought to have $8,500,000 claimed going concern value included in the rate base. In upholding the Commission, the court said: "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

Finally in Federal Power Commission v. Hope Nat. Gas Co. decided January 3, 1944, 320 US 591, 88 L ed —, 51 PUR(NS) 193, 199–201, 209, 64 S Ct 281, the court freed Commissions from the necessity of following Smyth v. Ames, *supra.* There the Commission reduced gas rates. In testing the value of the utility property, it had omitted an item of $17,000,000 expended for

drilling operations in an unregulated period of the utility's operations, and which in the same period had been recouped from earnings by having been charged off to operating expenses. The court rejected the contentions that the rate base should reflect the reproduction cost and trended original cost, and that the well drilling costs of $17,000,000 should have been included in the rate base. It said: "Rate-making is indeed but one species of price fixing. Munn v. Illinois (1877) 94 US 113, 134, 24 L ed 77. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid. . . . It does, however, indicate that 'fair value' is an end product of the process of rate making, not the starting point. . . . The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated.

"We held in Federal Power Commission v. Natural Gas Pipeline Co. *supra,* that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' Id. at p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the act. Id. at p 586. Under the statutory standard of 'just and reasonable' it is the result reached and not the method employed which is controlling. Cf. Los Angeles Gas & E. Corp. v. Railroad Commission, 289 US 287, 304, 305, 314, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 70, 79 L ed 761, 6 PUR(NS) 449, 55 S Ct 316; West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 692, 693, 79 L ed 1640, 8 PUR (NS) 433, 55 S Ct 894 (dissenting opinion). It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. . . . The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the act as unjust and unreasonable from the investor or company viewpoint." Answering other contentions the court said: "Congress has entrusted the administration of the act to the Commission not to the courts. Apart from the requirements of judicial review it is

not for us to advise the Commission how to discharge its functions."

[2, 3] The petitioner contends that the cases of Federal Power Commission v. Natural Gas Pipeline Co. and Federal Power Commission v. Hope Nat. Gas Co. *supra,* are inapplicable because they involved the commodity gas, as distinguished from the use of common carrier property. The petitioner does not contend, however, that the rate base theory of public utility valuation is not applicable in the present case. That theory of evaluating public utility property as determinative of the question of confiscation was adopted by the Commissions, and assumed by the court to be proper, in the cited cases. It follows that the holdings of the Supreme Court in those cases may be considered in a case involving common carriers. Therefore those cases, particularly the Supreme Court's decision in the Hope Natural Gas Company Case, *supra,* permits unreasonableness to be shown, not by the method employed to formulate a rate base, but by the fact that the "end result" of the Commission's order interferes with the company's successful operation, its financial integrity, its ability to maintain credit and attract capital, and to compensate investors for risks assumed—in short, fails to provide a return sufficient to induce the utility enterprise to "perform completely and efficiently its functions for the public." The Supreme Court refrained from endorsing a particular method of valuation to arrive at the result of reasonableness, but left Commissions free to follow Smyth v. Ames, *supra,* or to select one or more of the heretofore recognized criteria or a different method, which, even if irregular, would not invalidate an order unless unreasonableness were clearly established. Thus responsibility for rate fixing, in so far as the law permits and requires, is placed with the Commission, and unless its action is clearly shown to be confiscatory the courts will not interfere.

Section 32 of the Public Utilities Act (Stats 1915 p. 115, as amended), empowers the California Commission, after a hearing had upon its own motion or upon complaint, to make findings on the reasonableness of the rates charged by a public utility and to lower or increase the rates accordingly. By the same section the Commission also has power and it is made its duty, after a hearing had on its own motion or on complaint, to determine the facilities and operation adequate to meet the public requirements, and to fix the just, reasonable, and adequate rates for such service.

Section 67 of the Public Utilities Act provides for a review by this court for the purpose of having the lawfulness of the order and decision of the Commission inquired into. That section restricts the review to a determination of whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the state of California. It further provides that the findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review except as hereinafter noted, and that such questions of fact shall include ultimate facts and the findings and

conclusions of the Commission on reasonableness and discrimination. The exception to finality is that "in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the Commission material to the determination of said constitutional question shall not be final." That section also gives the court power to enter judgment either affirming or setting aside the order or decision of the Commission.

That part of § 67 which requires the independent judgment of the court on the law and the facts and withholds from the Commission's findings and conclusions finality on constitutional questions, was added by amendment in 1933. This court thereafter recognized that the amendment was responsive to language in certain United States Supreme Court decisions which indicated that the legislature must provide the means whereby the courts should exercise an independent judgment on the law and the facts when Federal constitutional questions were involved. Southern California Edison Co. v. Railroad Commission (1936) 6 Cal(2d) 737, 17 PUR(NS) 311, 59 P(2d) 808; American Toll Bridge Co. v. Railroad Commission (1938) 12 Cal(2d) 184, 83 P(2d) 1. The United States Supreme Court and this court assumed to exercise such judgment without statutory language, deeming it appropriate for the protection of constitutional rights; but in the exercise thereof, as variously stated in the decisions, the reviewing court refrains from sitting as a board of revision; and will not disturb the findings or conclusions of the regulatory body unless invasion of constitutional rights is clearly established. In the Edison Company Case, *supra*, this court pointed out that the amendment added nothing which was not theretofore a part of our state law; that it did not materially affect the procedure theretofore followed in a review under the Public Utilities Act, and did not make the court a trier of disputed questions of fact already resolved by the Commission. We said: "If the mere challenge on Federal constitutional grounds was intended by the amendment of 1933 to be sufficient to take the case out of the rule that the findings and conclusions of the Commission in such cases should be final and beyond review, then we would have grave doubt of the power of the legislature thus to transfer to this court the traditional functions of the Commission." (6 Cal(2d) at p. 748, 17 PUR(NS) at pp 318, 319.) In American Toll Bridge Co. v. Railroad Commission, *supra*, it was again stated that the amendment did not change the scope of the judicial review.

[4–12] In the present proceeding, as in the recent cases of Federal Power Commission v. Natural Gas Pipeline Co. and Federal Power Commission v. Hope Nat. Gas Co. *supra*, the standard for rate fixing is that of reasonableness. The petitioner herein must be charged with the burden of showing that the evidence does not support the Commission's finding of value, and that the reduced rate is unreasonable and will result in confiscation of its

property. That burden is coupled with a strong presumption of the correctness of the findings and conclusions of the Commission. Ordinarily a public utility is a monopoly and is not subject to the travail of competition. Because of its monopolistic character, public interest requires that it submit to regulation for the protection of the consumer, and the utility in return is entitled to protection of its investor interest. In the case of monopolistic utilities it is possible to say that regulation to accomplish the twofold purpose may be a relatively simple matter. But here the Commission was confronted with facts which are unusual in utility rate regulation. It was faced with the problem of evaluating the property of a utility which was in direct competition with a municipal utility offering similar service in the same community, in large part serving the same territory, and over which the Commission had no regulatory power. From the year 1912, when a competitive system of streetcar operation was established in San Francisco under municipal regulation, such obstacles to profitable operation by the Commission regulated utility were created that Commission regulation in effect gave way to regulation by competition. The evidence is clear that during the early competitive period and until the abnormal stimulation in public use brought about by the present World War, competition necessitated operation at a loss. Since the commencement of competition the company has not devoted to replacement and repair the amounts charged off on its books for those purposes, and its charges to depreciation reserve were lower than the actual annual plant consumption. In this connection it is significant that for tax purposes the company's accrued depreciation figure was shown to be $26,834,000, and its total depreciation reserve figure only $9,902,000. The factors which affected the value of the investment in this case justified the Commission in refusing to follow the practice of adopting as an annual charge to plant consumption the company's book depreciation reserve or any other hypothetical sum approved by accounting practices. The evidence supports the conclusion that the company permitted unusual deterioration in view of negotiations for sale to the city started many years ago. The ordinary methods or theories of depreciation accounting therefore would not reflect the true record of the past annual plant consumption and the result, were such methods adopted, would not be in conformity with the facts. On the other hand, the evidence of obsolescence, depletion, depreciation, and deterioration is such as to justify the Commission's observation that there was no available or procurable evidence of the fair value of the property except the amount contained in the company's offer to sell to the city, made in the period when the business was profitable. Acceptance of the company's book figures or of the amount of outstanding capitalization, in order to arrive at the present worth of the properties, would result in a figure inflated so far above fair value as to impede the Commission's authorized regulatory effort to restore the company as a useful public servant performing its functions adequately. Capitalization in any event has little relation to the depreciated value of the

investment. Also going concern value can have little if any place in the rate base under the facts except as the special factor of competition has so affected that value as to indicate it at nil. Separate appraisal of the going concern element is not required. (Federal Power Commission v. Natural Gas Pipeline Co. *supra.*)

It cannot be said that under the facts of this case arbitrary action resulted merely from the Commission's rejection of book values and capitalization, its refusal to make precise estimates of actual deterioration, of going concern or other values, and its acceptance of the company's offer of sale to the city made in a profitable period as the best evidence of the fair value of the utility in the present condition of its operative properties. The Commission expressly refrained from considering whether the amount of the offer in relation to value under all the conditions was not too high. Furthermore, it appears that studies of valuation for sale purposes were also made by the city and by the Commission, and only after such studies was a sale price selected which was deemed commensurate with the fair value of the property under existing conditions.

It is the real and not the nominal paper valuation that determines the amount of the investment on which the utility is entitled to a return. (See Pond, Public Utilities, 4th Ed. Vol. 2, pp. 1117, 1118.) As said in Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 78 L ed 1182, 3 PUR(NS) 337, 345, 54 S Ct 658, the "actual experience of the company is more convincing than tabulations of estimates. . . . Elaborate calculations which are at war with realties are of no avail." There is no fundamental or statutory law which will preclude the Commission from evaluating a public utility in accordance with the actualities. So to proceed is not to take private property for public use without compensation. There is no denial of due process in rejecting conjectural and unsatisfactory estimates of value, or in treating the petitioner's estimates as without probative value. California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 397, 398, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334. As was said in Los Angeles Gas & E. Corp. v. Railroad Commission, 289 US 287, 306, 77 L ed 1180, PUR 1933C 229, 241, 53 S Ct 637: "The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. The time and circumstances of the outlay, and the effect of altered conditions demand consideration."

The petitioner has not shown that the results are not in accord with the realities. Both before the Commission and in this court it contented itself merely with urging that the Commission proceeded erroneously in selecting for rate-making purposes the offer price of $7,950,000, because, so it claims, that figure was based on a capitalization of earnings. The petitioner made no offer or attempt to show that the value fixed by the Commission did not represent either the true depreciated legitimate cost or the true depreciated actual cost. In Minnesota Rate Cases (1913) 230 US 352, 466, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A

18, it was said that "the company having assailed the constitutionality of the state acts and orders was bound to establish its case, and it was not entitled to rest on expressions of judgment when it had it in its power to present accurate data which would permit the court to draw the right conclusion." Since it is impossible to say in the light of the evidence in this proceeding that the figure selected by the Commission does not bear a proper relation to the fair value of the utility under existing conditions, it must be concluded that the petitioner has not shown arbitrary action on the part of the Commission in selecting the sale offer price as the rate base, or that the evidence does not support the Commission's finding that the figure selected represents at least fair value, if not more than that.

[13, 14] The petitioner has also failed to meet the burden cast upon it to establish that the return on the rate base under the reduced fare will prevent the utility's functioning adequately from the company or investor standpoint. The Commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenues, expenses, and other costs. This court will not disturb its findings on those disputed questions of fact. The company is now and for several years has been doing an abnormally increased traffic business with returns greatly in excess of its operating costs plus increased reserves for depreciation and taxes. It does not question that under a 7-cent fare it has enjoyed a return of more than a fair percentage above the constitutional line of confiscation on the fair value as found by the Commission. Nor is it questioned that a return of 6 per cent on the value of its capital investment is unconstitutional. The petitioner claims that the Commission's estimates are false, and that falsity resides in the fact that at the prevailing cost per head for passenger transportation, it will suffer a deficit on the estimated volume of increased traffic at the 6-cent fare. The fallacy, however, is in the assumption that the cost ratio under the 6-cent fare will be the same as under the 7-cent fare. The Commission answers that the assumption is not true, inasmuch as the increase in traffic is expected, not necessarily in the peak hours, but in large part from the patronage in off hours which was diverted to Municipal Railway, or discontinued upon the inception of the higher rate, and which is expected to be regained materially upon the reduction of the fare and the improvement of the service. The petitioner also claims that the Commission did not consider the evidence of a probable increase in labor costs pursuant to pending negotiations with labor unions. The Commission on the other hand states that it did give consideration to that element. The Commission's figures, with increased allowances for operating expenses, depreciation, and taxes, must be deemed to resolve these disputed points adversely to the petitioner. "Long operation and adequate records make forecasts of net operating revenues fairly certain." Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 120, 83 L ed 1134, 28 PUR(NS) 65, 75, 59 S Ct 715.

[15] The foregoing discussion demonstrates that the interests of the investor have received constitutional protection by the action of the Commission. Under rule by competition and the consequent great deterioration in its capital investment, the utility's ability to attract capital has undoubtedly suffered. But this is not an element that can be controlled by the regulatory body beyond the possibility of insuring to the utility a fair return on the value of the capital investment when business is profitable. The fact that the utility has suffered deficits in the past does not justify excessive profits in the future. (Los Angeles Gas & E. Corp. v. Railroad Commission, *supra*, 289 US at p. 313; Federal Power Commission v. Natural Gas Pipeline Co. [1942] 315 US 575, 590, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736.) "When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost or quality of service." (West Ohio Gas Co. v. Ohio Pub. Utilities Commission [1935] 294 US 63, 72, 79 L ed 761, 6 PUR(NS) 449, 455, 55 S Ct 316.)

[16, 17] The record is also clear that the Commission has not been arbitrary in acting for the protection of the public which is under compulsion to use the present depleted and inadequate service, or which may be expected to make use of an improved service. As the Commission said in its opinion: "After making such allowance [for wartime difficulties] the important question remains to what extent the ratepayer, under war conditions, should be compelled to pay the same or higher rates for an inadequate and inferior product or service while the utility enjoys abnormal profits." It is unnecessary to consider whether the 7-cent fare would still be unreasonable were the petitioner performing a fully adequate and efficient service. The findings of inadequacy in the maintenance and service are supported by the evidence. The Commission is empowered under the statute in fixing the fare to take into consideration the quality of the facilities and service. The Commission decided that even in wartime improvement was possible, and that the value of the improved service would be no more than 6 cents. The problem of the value of the service, and the correctness of the Commission's decision on the consumer interest, do not involve constitutional questions, so long as otherwise the investor or company interest has received adequate consideration by the Commission. When the company interest has received constitutional protection, the findings of the Commission on the consumer interest become final in the proceeding. The question involving that interest then has been answered by the Commission correctly pursuant to the statute and the authorities to the effect that the reasonableness of rates should not be considered apart from the adequacy of the service, and that the public should not be charged more than the service is reasonably worth. The statute is a legislative recognition of the public's right to demand that consideration be given to the value of the service. (Covington & L. Turnpike Road Co. v. Sandford [1896] 164 US 578, 596, 41 L ed 560, 17 S Ct 198; Spring Valley Waterworks v. San Francisco [1911] 192 Fed 137; see Article,

Value of the Service As a Factor in Rate Making, 32 Harv. Law Rev. 516.)

[18] In the final analysis the question whether the right to just compensation for the service rendered has been denied to the utility depends upon the special facts in the case. (The Minnesota Rate Cases, *supra,* 230 US at p 434.) Each case must be controlled by its own circumstances. (Los Angeles Gas & E. Corp. v. Railroad Commission, *supra,* 289 US at p. 315.) Pragmatic adjustments depend upon the particular facts. (Federal Power Commission v. Natural Gas Pipeline Co. *supra.*) It does not appear from the facts in this record that the rate fixed by the Commission is so unreasonably low as to call for a declaration that Market Street Railway Company has been deprived of its property without due process of law or without just compensation.

[19] The petitioner asserts some errors in the admission and consideration of statistical and other documentary evidence. It is not the function of the reviewing tribunal in these proceedings to set aside the legislative finding for mere errors of procedure not amounting to lack of due process. Its duty is to ascertain whether the legislative process has resulted in confiscation. (West v. Chesapeake & P. Teleph Co. [1935] 295 US 662, 674, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894.)

[20] The petitioner objects to the apparent indeterminate duration of the experimental period under the 6-cent fare fixed by the Commission. The Commission still has jurisdiction and if from the monthly reports filed by the company during a reasonable experimental period it appears that the expected increase in passenger traffic on the utility's system due to the reduction in fare and improvement in service does not materialize, the Commission has the power to make appropriate adjustments. As the prescribed rate is expressly stated to be tentative, there is no ground for assuming that the Commission will reject an application to make such changes as experience may show to be necessary in order to produce the stipulated revenue. (Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission [1934] 291 US 227, 241, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427.)

The order is affirmed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Philadelphia Suburban Transportation Company

Application Docket No. 62725
June 6, 1944

APPLICATION *for approval of plan of reorganization of a transportation company; plan disapproved.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Corporations, § 22 — Reorganization — Cash distribution to creditors.

A new plan for reorganization of a transportation company, filed by another transportation company which became a reorganization creditor by purchase of bonds subsequent to Commission appproval of an earlier reorganization plan, should be disapproved where the new plan provides, adversely to the public interest, for a cash distribution to reorganization creditors, while the earlier plan contained no provision for a cash distribution.

(BUCHANAN, Commissioner, concurs in separate opinion; THORNE, Commissioner, dissents.)

By the COMMISSION: By order issued on June 1, 1942, at A. 61292, we approved the plan of reorganization for Philadelphia & Western Railway Company (P. & W.), dated March 2, 1942. Amendments to the plan, dated November 17, 1942, January 4, 1943, and March 23, 1943, were approved by us on July 7, 1943. The plan, as amended, will be hereinafter sometimes referred to as the P. & W. plan.

The plan was approved by the United States district court for the eastern district of Pennsylvania in an opinion filed on July 29, 1943, and by order entered on August 9, 1943. On August 16, 1943, in accordance with the directions of the court, the plan was submitted to the creditors of P. & W. for acceptance or rejection.

Philadelphia Suburban Transportation Company (P.S.T.) became a creditor of P. & W. through the purchase, between July 19, 1943, and August 23, 1943, of approximately $800,000 of P. & W. old bonds, constituting approximately 30 per cent of the total bonds outstanding. On January 10, 1944, which was the date fixed by the court for hearing on the final confirmation of the P. & W. plan, P.S.T., appearing as a creditor, was granted permission by the court to file a new plan of reorganization for P. & W. The court accordingly continued the hearing on the confirmation of the P. & W. plan.

P.S.T.'s plan of reorganization, dated January 14, 1944, was filed with the court on January 15, 1944, and pursuant to order of the court entered on that day was filed with us on January 18, 1944, at A. 62725. A protest against the plan was filed with us by P. & W. Public hearings on the plan were held by us on March 2nd, 3rd, 20th, and 21st. This plan will be hereinafter sometimes referred to as the P.S.T. plan.

Prior to the first hearing on the P.S.T. plan, P.S.T. filed a motion to dismiss the protest of P. & W. on the ground that since the court had not authorized P. & W. to file its protest and appear before us, we lack jurisdiction to consider P. & W. as a proper party to the application before us. This averment, as we see it, is of only academic interest, since the bases of P. & W.'s protest go to the heart of P.S.T.'s plan of reorganization, and therefore would have received our considered attention even if no protest had been filed.

The P. & W. plan provides, among other things, that holders of $2,627,000 principal amount of outstanding

P. & W. first mortgage bonds shall receive $400 principal amount of new bonds and four shares of new common stock for each $1,000 principal amount of old bonds, and that the holder of an unsecured claim for $65,000 shall receive $6,500 principal amount of new bonds and 65 shares of new common stock. The P.S.T. plan provides that present bondholders shall receive $280 principal amount of new bonds, $120 cash, and four shares of new common stock for each $1,000 principal amount of presently outstanding bonds, and that the unsecured claimant shall receive $4,550 principal amount of new bonds, $1,950 cash, and 65 shares of new common stock. Both plans provide that preferred and common stockholders shall not participate in the reorganization.

The P. & W. plan thus does not provide for the distribution of any cash to reorganization creditors, while the P.S.T. plan provides for the distribution to them of $317,190 cash. This is the essential difference between the two plans.

We find that the proposed distribution of $317,190 in cash would be adverse to the public interest. Furthermore, in view of our declaration of policy of June 7, 1943,[1] in the matter of the abnormal wartime earnings of utilities and the impossibility of their currently doing normal plant maintenance work, because of shortages in materials and man power, we deem it unnecessary to find whether any lesser amount of cash is available for distribution to reorganization creditors. Now, in the midst of the war crisis, is not the time to syphon funds out of P. & W.'s treasury, particularly since the distribution of such funds to reorganization creditors is not essential to a reorganization of P. & W. All funds not absolutely needed for current operation should be conserved until after the war, when it will be clearer how much of the funds will be required to be expended for the public good.

Although it is not determinative of our judgment of the P.S.T. plan, it may be noted that P.S.T. became a creditor of P. & W., through the purchase of P. & W. bonds, after we had approved the P. & W. plan of reorganization and while that plan was in process of approval by the court. P.S.T. therefore was not a bona fide reorganization creditor of P. & W. Its appearance on the scene was purely opportunistic, in an effort to acquire control of P. & W. as reorganized.

P.S.T., moreover, knew that in acquiring P. & W. bonds it would acquire more than 5 per cent of the voting capital stock of P.S.T. as reorganized, whether reorganized under the P. & W. plan or under its own plan. It nevertheless did not, before it purchased the bonds, ask our approval, under § 202(f) of the Public Utility Law, of the acquisition of the shares of stock of P. & W. which it would acquire as a reorganization creditor.

The matters and things involved

[1] In which we said, in part: "It is imperative that public utilities maintain a strong financial position throughout the war emergency, to the end that they may render prompt and uninterrupted service during said emergency and that they may enter the postwar period prepared to promptly take up the matter of deferred maintenance and the rehabilitation of their properties." (50 PUR(NS) 17, 18.)

in the P.S.T. plan of reorganization having been duly presented and heard, and full consideration having been given thereto, except in respect of matters relating to claims of creditors and to the distribution of new securities and cash among creditors and holders of presently outstanding securities, said matters not being within our jurisdiction, we find and determine that said plan is neither fair nor in the public interest; therefore,

Now, to wit, June 6, 1944, it is *ordered:*

1. That a certain new plan of reorganization for Philadelphia & Western Railway Company filed with the district court of the United States for the eastern district of Pennsylvania on January 15, 1944, and filed with the Pennsylvania Public Utility Commission on January 18, 1944, be and is hereby disapproved as being neither fair nor in the public interest.

2. That a copy hereof be filed with the district court of the United States for the eastern district of Pennsylvania on or before June 12, 1944.

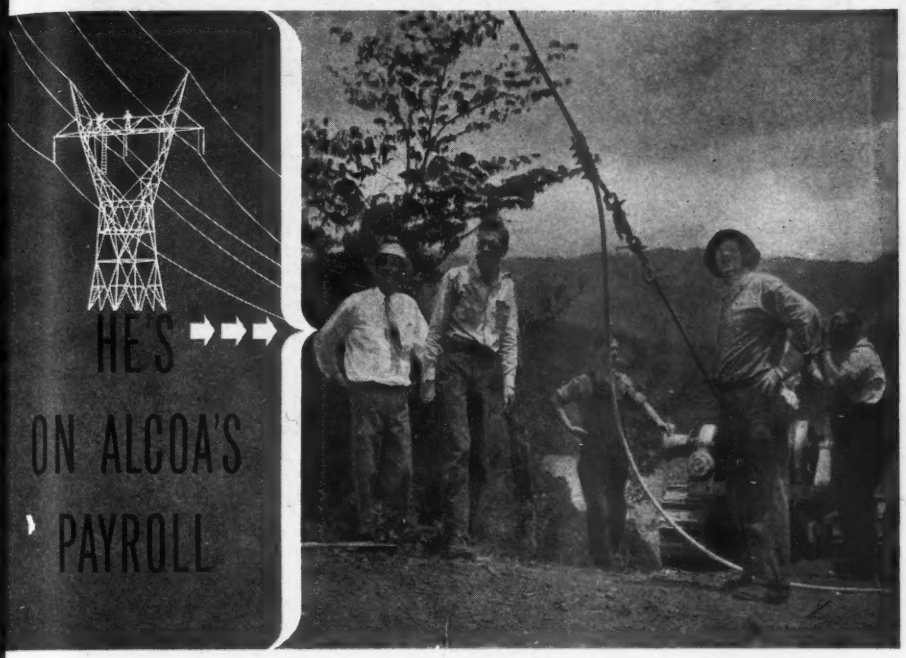
The Chairman being absent did not participate in the vote on this order.

Commissioner Buchanan files a concurring opinion.

Commissioner Thorne voted in the negative.

BUCHANAN, Commissioner, concurring: Only one thing was accomplished by the Philadelphia Suburban Transportation Company plan now before us. It acknowledged the overcapitalization contained in the plan filed at A. 61292 and approved by this Commission on June 1, 1942. However, the attempt here to reduce the overcapitalization by robbing the depreciation and other reserves merely substituted one evil for the other. It would have resulted in no improvement in the credit position whereby the depreciation funds were secured by substituting property in lieu of such funds and, having been accomplished, even then normal earnings would not justify the reduced capitalization. Consequently the cash funds so used would have been without compensation by way of an improved credit position, and the reserves would have been left denuded.

I concur in the result of the majority action.



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Fixture Competition Announced for Utility Lighting People

To stimulate interest in improved postwar lighting, a design competition open to anyone connected with the lighting division of a public utility has been announced by Sylvania Electric Products, Inc., of Salem, Mass. A total of $1600 in prizes will be awarded for the best designs for a shielded commercial fixture for four 40-watt fluorescent lamps. Designs submitted will be judged by Howard M. Sharp, president of the Illuminating Engineering Society; Allan E. Parker, physics professor, Worcester Polytechnical Institute; Lurelle Guild, product design consultant; C. A. Carpenter, electrical engineer, Graham, Anderson, Probst & White.

Appearance, ease of installation, maintenance, shielding and efficiency will be the principal considerations in selecting winners.

Official entry blanks, rules and complete details are available to utility lighting people on request to Sylvania Electric Products, Inc., Boston Street, Salem, Mass. Entry blanks should be postmarked not later than October 1, 1944, to cover designs submitted before December 1, 1944. Results of the competition will be announced on or before January 1, 1945.

Westinghouse Plants Receive High Awards

Although, according to Navy records, less than two-tenths of one per cent of the nation's war plants have thus far achieved the honor, two plants of the Westinghouse Electric and Manufacturing Company in Philadelphia, Pa., have been awarded a fourth renewal of the Army-Navy "E," company officials announced recently.

They are the Steam Division at nearby Lester, which builds turbines to drive warships, and the 30th Street Manufacturing and Repair plant.

In addition, the new Merchant Marine Division plant at Lester, which builds turbines for Victory ships, has just received word of the second star added to its "M" pennant, awarded by the Maritime Commission.

A-C Appointment

Frank C. Angle, manager of Allis-Chalmers sales activities in the Pacific region, has just been appointed manager of all Allis-Chalmers field sales offices of the General Machinery Division and their operations, according to an announcement by W. C. Johnson, vice-president. He will continue to supervise operations of the Pacific region.

Edison Division Names New Assistant Manager

Preparatory to increasing its activities in the aeronautical field, the Instrument Division of Thomas A. Edison, Inc., West Orange, N. J., has named Carl H. Odell as assistant manager. This was announced by C. D. Geer, operating vice president of that division.

Mr. Odell was formerly with the Federal Telephone and Radio Corp. as an executive in its Direction Finder Division. Previous to that affiliation he was a manager of the electronics plant of Sperry Gyroscope Corp. He came to Sperry from Jack and Heintz Corp. of Cleveland, with whom he was identified since the beginning of that organization.

Harvester Forms Foreign Operations Organization

FOWLER MCCORMICK, president of the International Harvester Company recently announced the formation of a new Foreign Operations organization which will be in charge of all of the foreign activities of the company, except Canadian operations. The Harvester Foreign Operations organization will be headed by G. C. Hoyt as vice president, who heretofore has been vice president in charge of foreign sales.

There will be no change in the status of the company's various foreign subsidiaries, which will continue to operate as at present, carrying on the company's business in the respective countries in which they operate.

"Klein-Kord" Lineman's Belt

MATHIAS KLEIN & Sons, Chicago, Illinois, manufacturers of pliers, tools and equipment for the electrical field, announce a tool belt made of Klein-Kord, a newly developed material consisting of multi-ply, specially woven long staple cotton laid in rubber and vulcanized.

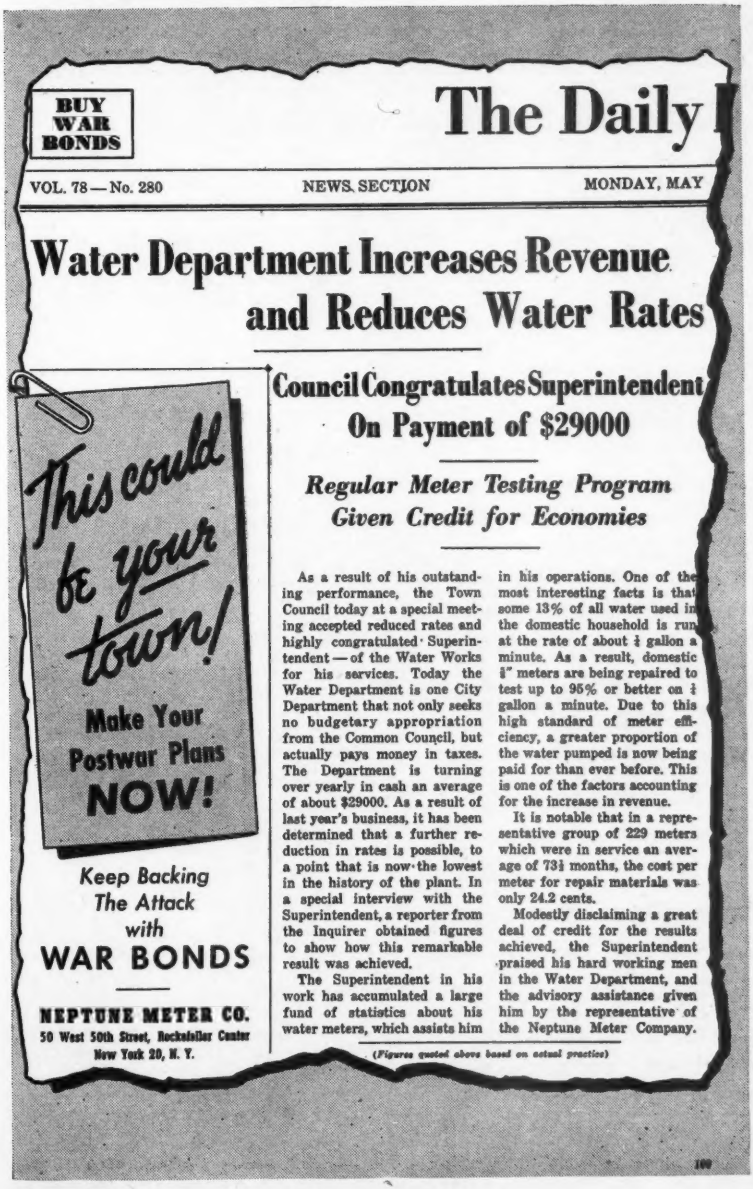
According to the manufacturer, Klein-Kord is water-proof, has a tensile strength many times that demanded in actual service, and possesses absolute uniform quality, great strength, and flexibility.

Other new Klein-Kord products include climber straps and pads.

Electrical Industry Launches Street Lighting Campaign

ONE of the most important services which can be rendered in the direction of adequate lighting in the heavy traffic days after the war will be the provision of practical information for the use of:

1. Municipal officials who must make the decision and have it agreeable to the public.
2. Utility executives who must provide new equipment and electrical energy and who should receive fair payment.
3. The public who will do the dying in traffic accidents unless considerable street



BUY WAR BONDS

The Daily

VOL. 78 — No. 280 NEWS SECTION MONDAY, MAY

Water Department Increases Revenue and Reduces Water Rates

Council Congratulates Superintendent On Payment of $29000

Regular Meter Testing Program Given Credit for Economies

As a result of his outstanding performance, the Town Council today at a special meeting accepted reduced rates and highly congratulated Superintendent — of the Water Works for his services. Today the Water Department is one City Department that not only seeks no budgetary appropriation from the Common Council, but actually pays money in taxes. The Department is turning over yearly in cash an average of about $29000. As a result of last year's business, it has been determined that a further reduction in rates is possible, to a point that is now the lowest in the history of the plant. In a special interview with the Superintendent, a reporter from the Inquirer obtained figures to show how this remarkable result was achieved.

The Superintendent in his work has accumulated a large fund of statistics about his water meters, which assists him in his operations. One of the most interesting facts is that some 13% of all water used in the domestic household is run at the rate of about ¾ gallon a minute. As a result, domestic ¾" meters are being repaired to test up to 95% or better on ¾ gallon a minute. Due to this high standard of meter efficiency, a greater proportion of the water pumped is now being paid for than ever before. This is one of the factors accounting for the increase in revenue.

It is notable that in a representative group of 229 meters which were in service an average of 73¾ months, the cost per meter for repair materials was only 24.2 cents.

Modestly disclaiming a great deal of credit for the results achieved, the Superintendent praised his hard working men in the Water Department, and the advisory assistance given him by the representative of the Neptune Meter Company.

(Figures quoted above based on actual practice)

100

This could be your town!

Make Your Postwar Plans NOW!

Keep Backing The Attack with WAR BONDS

NEPTUNE METER CO.
50 West 50th Street, Rockefeller Center
New York 20, N. Y.

lighting is installed, and who consequently need to understand its values.

These three types of information will be furnished on an organized scale by means of an Industry Promotion Program sponsored by the street lighting section of the National Electrical Manufacturers' Association, through the Street and Traffic Safety Lighting Bureau.

It is the belief of the association that if the utilities are properly sold on the idea of promoting street lighting, they will in turn sell an important segment of the public through talks to women's clubs, civic groups, merchants' associations, through window and lobby displays, the circularization of literature provided by the Street and Traffic Safety Lighting Bureau and through the setting up of demonstration streets and areas.

As part of the appeal to municipal officials, the Bureau will prepare a monthly newsletter to be sent directly to them or be distributed through the utilities or through the facilities of the Street and Traffic Safety Lighting Bureau. This newsletter will contain a condensation of news stories, articles and editorials on street lighting appearing in current magazines and newspapers; street lighting promotion plans and activities of cities; accident statistics and street lighting promotion material. It will be supplemented by monthly direct mail pieces.

Part of the plan also calls for a series of strong advertisements directed at municipal officials and utility executives. An important phase of industry promotion directed toward the utility executives will be another newsletter, somewhat similar to the one for municipal authorities, also to be supplemented by monthly direct mail pieces.

Other sales helps to be made available to the utilities for use in selling municipal officials and the public will include exhibits, movie shorts, publicity releases, and sales portfolios.

Augmenting the entire program, the Street Lighting Section of NEMA will distribute a "Suggested Street Lighting Plan Book for Utilities" to executive and lighting specialists.

Further information may be obtained from the Street and Traffic Safety Lighting Bureau, 155 East 44th Street, New York 17, New York.

"Ribboninker"

DISPLAY Equipment Company has introduced "Ribboninker" which is designed to rejuvenate discarded typewriter ribbons, adding machine ribbons, teletype ribbons, etc., at about two cents per ribbon. According to the manufacturer, recent surveys show that 95 per cent of these discarded ribbons are not worn out, but merely "dried" out.

Operating the unit is said to be very simple and requires only a few minutes' time to reink the ribbon. By using the "Ribboninker" the manufacturer claims that ribbons may be used until the fabric breaks. Further information may be obtained from the manufacturer, Post Office Box D 144, Adrian, Michigan.

Computor for Bituminous Mixes

A SLIDE rule computor for bituminous mixes to enable paving engineers and contractors to calculate easily and quickly the tonnage needed for any job has been developed by Kotal Company. The rule is designed to accommodate any variation in the density of the mix—from the most open cold mix to the densest hot mix—any length, width, or thickness desired—from driveways to airport runways.

At present, the model with a celluloid face is obtainable at $3.00 per rule from the Kotal Company, 52 Vanderbilt Avenue, New York 17, New York.

Instrument Course Reopened

FIRST of the 1944-45 industrial instrument maintenance and repair courses of the training school, Brown Instrument Co., Philadelphia division of Minneapolis-Honeywell Regulator Co., will start September 25th. The classes will be attended to the largest extent by personnel from customer plants and will continue through December 22nd.

Save to Win
with these four simple rules
of battery care:

1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

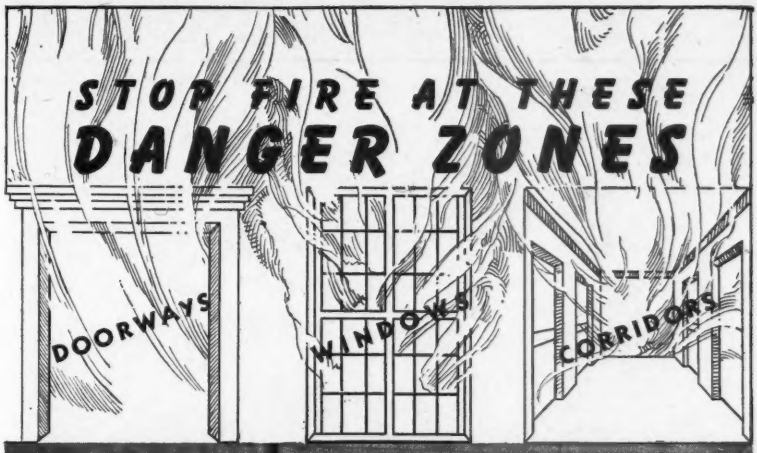
. . . is a vital principle of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto

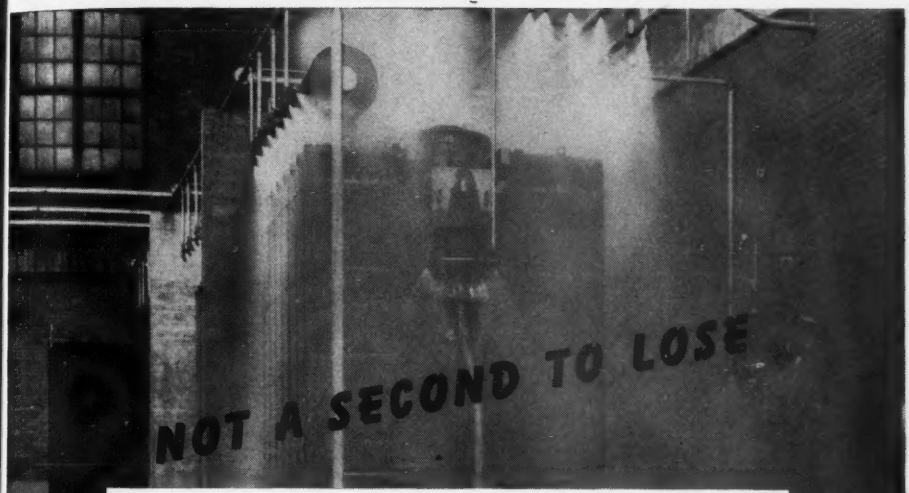


with KINNEAR ROLLING FIRE DOORS

Sabotage by fire is now a greater threat to vital production than ever before. And when a fire does break out, open or unprotected doorways, windows and corridors become one of your greatest hazards. Strong drafts can sweep flames through such openings with disastrous speed.

But you can *stop fire* at these danger zones with Kinnear "AKbar" Rolling Fire Doors and Window Shutters. They are *fireproof* . . . automatically controlled . . . equipped with a strong, push-down starting spring that assures quick, positive closure. They are *safe*, too, because their downward speed is controlled, to guard against injury to persons passing underneath — and a special counterbalance permits emergency opening after automatic closure. They are approved and labeled by the Underwriters' Laboratories. And Kinnear Rolling Fire Doors can readily be equipped for regular, daily service use, with motor or manual control! Write Kinnear today for the complete story! THE KINNEAR MANUFACTURING COMPANY, 2060-80 Fields Avenue, Columbus, Ohio.

SAVING WAYS IN DOORWAYS **KINNEAR ROLLING DOORS**



A transformer blaze must be stopped in a very few seconds – before spreading flames and explosions wreck the entire installation. That's why so many utilities protect oil-filled equipment with a . . .

GRINNELL MULSIFYRE SYSTEM

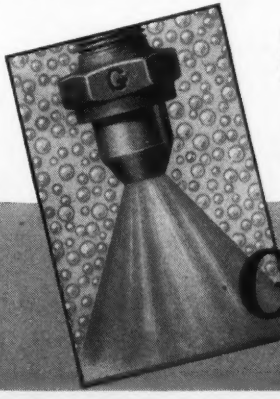
Mulsifyre Systems operate on the principle of emulsifying blazing oil with a driving spray of water. The oil is turned into a liquid which is incapable of burning. A Mulsifyre System extinguishes fire in a few seconds and prevents reignition.

Complete separation of water and oil takes place in a few hours . . . leaves oil undamaged.

There is absolutely no conductivity along the discharge of a Mulsifyre projector when spray strikes conductors carrying high voltages.

Mulsifyre Systems are permanently installed . . . they operate automatically or manually.

Recommended by Underwriters' Laboratories for use in extinguishing fires in flammable oils immiscible with water, wherever such oil is a fire hazard . . . in transformers and other oil-filled electrical equipment.



INVESTIGATE this simple, sure oil fire protection. Write for Data Book by Underwriters' Laboratories.

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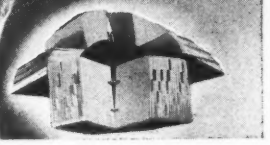

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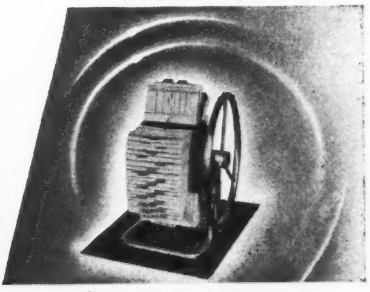

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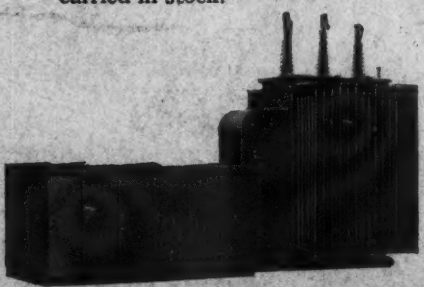

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